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THE SITUATION IN BOSNIA AND HERZEGOVINA

SECURITY COUNCIL
Forty-seventh year

Letter dated 4 November 1992 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith, annexed to the present letter, the "Declaration of the Committee of Ministers of the Council of Europe on the conflict in the former Yugoslavia", adopted at the Special Ministerial Meeting of the Committee of Ministers, held at Istanbul on 10 and 11 September 1992, and chaired by His Excellency Hikmet Çetin, Minister for Foreign Affairs of the Republic of Turkey, in his capacity as current Chairman of the Committee of Ministers of the Council of Europe.

I would be grateful if you would circulate the text of the present letter and its annex as a document of the General Assembly, under agenda item 143, and of the Security Council.

(Signed) Mustafa AKŞİN
Ambassador
Permanent Representative

ANNEX

Declaration of the Committee of Ministers of the Council of Europe on the conflict in the former Yugoslavia, adopted on 11 September 1992

1. The Committee of Ministers of the Council of Europe expresses its profound alarm over the conflict in former Yugoslavia, where every day there is violation with the utmost brutality of human rights and the Organization's other principles, causing untold human suffering.

2. It further expresses its grave concern over the growing danger that hostilities may spread to other Republics and territories, thus threatening the security, stability and democratic future of the whole region.

3. Convinced that a lasting solution to the conflict can be found only through respect for international law and the principles and commitments of the Council of Europe and of the CSCE, in particular the inviolability of frontiers and respect for human rights, fundamental freedoms and the rights of persons belonging to national minorities, the Committee of Ministers:

- condemns "ethnic cleasing", which recalls the darkest moments of Europe's history;

- declares that it will not recognize any situation created by a policy of "faits accomplis";

- insists that forced expulsion, deportation, attempts to change by force the ethnic composition of regions, as well as illegal detention, cease immediately, and calls for detainees to be released and displaced persons and forced migrants to be permitted and helped to return to their homes.

4. The Committee of Ministers expresses its full support for the Statement of Principles and the other agreements reached at the London Conference and underlines the importance of the full compliance with these commitments as well as of the decisions taken at the International Conference on Peace in ex-Yugoslavia currently under way in Geneva. The Committee of Ministers therefore:

- demands from all parties to comply strictly with all commitments arrived at or resulting from the London Conference;

- demands from all forces, and particularly those of Serbia and Montenegro, to cease their aggression against the sovereign State of Bosnia Herzegovina and to desist from the threat or use of force against that State or on its territory;

- welcomes the efforts of the Security Council to provide a mandate for adequate military protection of humanitarian aid convoys and international supervision of the heavy weapons of all the parties concerned;

- firmly condemns any attacks against UNPROFOR and international observers and demands that those responsible be sought and severely punished;

- supports all efforts to make existing United Nations' sanctions effective;

- calls upon the United Nations Secretary-General and the Security Council to take all necessary measures with a view to enforcing compliance with the decisions of the Security Council by parties that continue to obstruct a political solution to the conflict and that frustrate the safe delivery of humanitarian aid;

- instructs the Secretary-General to contact the Co-Chairmen of the Steering Committee of the International Conference on Peace in ex-Yugoslavia with a view to working out what contribution the Council of Europe could make to the study of the various aspects of the creation of an international criminal Court, taking into account Assembly Recommendation 1189 (1992) and other work undertaken on the question, such as that of the United Nations International Law Commission, and to making inquiries concerning criminal acts committed by individuals with regard to the Geneva Conventions;

- declares the readiness of the Council of Europe to contribute in particular to the CSCE missions on human rights, including those which are to be sent to Kosovo, Sandjak and Vojvodina;

- reaffirms the readiness of the Council of Europe to do all in its power to help in the search for a lasting solution in conjunction with the European Community and its member States, the CSCE and the United Nations;

- instructs the Secretary-General to contact the Co-Chairmen of the Steering Committee of the International Conference on Peace in ex-Yugoslavia with regard to the contribution that the Council of Europe could make in the fields of its competence to the work of the Conference, concerning, inter alia, the creation of a legal framework for the strict implementation of all human rights commitments and the elaboration of the constitutional framework necessary for a lasting solution of the problems related to the situation of nationalities and national minorities on the territory of former Yugoslavia.

5. The Committee of Ministers expresses full support for the efforts of the ICRC and UNHCR regarding humanitarian assistance and sheltering of refugees

and displaced persons in the region and calls upon member States and the organs of the Social Development Fund, in concertation with UNHCR, to mobilize the full potentialities of the Fund for the resettlement of the refugees.

6. Lastly, the Committee of Ministers intends to continue to work for the respect for the values and principles upheld by the Council of Europe throughout the territory of former Yugoslavia, as well as the restoration of confidence between the populations affected by this conflict.

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SECURITY COUNCIL
Forty-seventh year

Letter dated 5 November 1992 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Further to my letter dated 4 November 1992 (A/47/652-S/24792), I have the honour to enclose herewith, annexed to the present letter, the "Declaration of the Committee of Ministers of the Council of Europe on the conflict in the former Yugoslavia", adopted at the Special Ministerial Meeting of the Committee of Ministers, held at Strasbourg on 5 November 1992, and chaired by His Excellency Hikmet Çetin, Minister for Foreign Affairs of the Republic of Turkey, in his capacity as current Chairman of the Committee of Ministers of the Council of Europe.

I would be grateful if you would circulate the text of the present letter and its annex as a document of the General Assembly, under agenda item 143, and of the Security Council.

(Signed) Mustafa AKŞIN
Ambassador
Permanent Representative

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ANNEX

Declaration on the situation in the former Yugoslavia

1. The Committee of Ministers of the Council of Europe expresses its deep concern about the impending human tragedy which threatens to engulf the former Yugoslavia as winter approaches.

2. It considers that the scale of the ever-increasing suffering calls for immediate and resolute action by the international community, and underlines the urgent need to ensure safe areas and to provide emergency relief and shelter for the refugees.

3. The Committee of Ministers condemns the generalized and persistent recourse to violence and the brutal violations of human rights and international humanitarian law which are the cause of untold human suffering and constitute at present the main obstacle to the provision of indispensable aid.

4. The Committee of Ministers recalls its Declaration on the conflict in the former Yugoslavia, adopted on 11 September 1992 at Istanbul, and in which it

- condemned "ethnic cleansing";

- declared that it would not recognize any situation created by a policy of faits accomplis;

- expressed its grave concern over the growing danger that hostilities may spread to other republics and territories;

- insisted that forced expulsion, deportation, attempts to change by force the ethnic composition of regions, as well as illegal detention, cease immediately and that the previous situation be re-established.

5. The Committee of Ministers

- supports the efforts of the United Nations Secretary-General and the Security Council to take the necessary measures with a view to enforcing compliance with the latter's decisions;

- recalls the absolute necessity for all the Parties to honour the totality of the commitments they accepted at the London Conference of last August;

- expresses its firm support for the action of the Geneva Conference. It recalls its support for the maintenance of the Bosnian State and of its present frontiers, the need for the agreement of the three Parties (Serbs, Croats and Muslims), as well as its support for the

draft Constitution for Bosnia and Herzegovina, based on democratic principles, including the protection of human rights and of minorities.

6. In the framework of work in progress, the Committee of Ministers, in the light of a report by the Secretary-General on talks with the Co-Chairman of the Steering Committee of the Geneva Conference, Lord Owen and Mr. Cyrus Vance, and after contacts with the Presidents of the European Court and the Commission of Human Rights, welcomes the idea of creating, within the framework of the Constitution of Bosnia and Herzegovina, a judicial control of human rights with the participation of the Council of Europe.

The Committee of Ministers instructs its Deputies to consider, as a matter of urgency, the political and legal aspects of the implementation of such a proposal within the framework of the Geneva Convention.

7. Finally, the Committee of Ministers reiterates its support for the efforts being made in the area of humanitarian aid, to protect displaced persons and refugees by member States and by the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Refugees (UNHCR), and requests the Social Development Fund of the Council of Europe to examine all possibilities for action in this field.

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NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 6 November 1992 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to draw your attention to further aggressive measures against Cuba taken recently by the Government of the United States of America. Barely two weeks ago, on 23 October 1992, President George Bush brought into force, as part of the defense appropriations act, the arrogantly entitled "Cuban Democracy Act of 1992" which he signed in Miami amidst considerable electoral fanfare; the Act was also known, while at the legislative stage, as the "Toricelli draft", and was adopted by the United States Congress on 6 October.

This Act, whose aim is further to tighten the economic, commercial and financial embargo imposed by the United States of America against Cuba, constitutes a gross and unprecedented violation of the Charter and of international law, as it seeks to subordinate the sovereignty not only of Cuba - which is the main target of the measure - but also of each and every one of the members of the international community to the political decisions taken by Washington, which are presented as purportedly legal measures of an extraterritorial scope.

These further measures by the Government of the United States provide full confirmation for the positions long maintained by Cuba, and which we put before the Organization since the forty-sixth session of the General Assembly, regarding the illegal and immoral policy of blockade and isolation practised against Cuba by the Government of the United States for over three decades.

In view of its relevance to the consideration of this matter by the General Assembly at its current session, I should be grateful if you would circulate this letter and the annex thereto as official documents of the General Assembly under agenda item 39.

(Signed) Alcibíades HIDALGO BASULTO
Ambassador
Permanent Representative of Cuba
to the United Nations

ANNEX

On 23 October 1992, despite the opposition of many in his own country and the strong objections raised in the international community, President George Bush of the United States signed into law legislation which takes the United States economic, commercial and financial blockade of Cuba to new and still greater extremes. Both an assault on the sovereignty of Cuba and on the sovereignty of third countries, this new United States measure, the so-called "Cuban Democracy Act of 1992", is a grave and open challenge to the international community as a whole.

Even before the passage of this legislation, we demonstrated that the blockade of the United States was in violation of international law because it seeks to coerce Cuba into adopting an economic and political system imposed by the United States. We have always maintained also that the national security and foreign policy concerns advanced by the United States for more than 30 years to justify its blockade were pretextual. Now, these pretences are gone and the true motivations of the blockade of the United States have been openly and arrogantly revealed.

With a candour that is both astonishing and frightening, the Government of the United States has proclaimed, in this new legislation and in the accompanying statements of President Bush and his State Department, its goal of coercing Cuba, through an ever-intensifying programme of economic strangulation, into abandoning its economic and political system in favour of one dictated by the United States, thus blatantly violating the United Nations Charter and international law as concerns the fundamental rights of Cuba to exercise, without hindrance, its sovereignty, independence, self-determination and its juridical equality as a State.

We had additionally detailed for the General Assembly the many ways in which the United States went well beyond suspending commerce between its own citizens and Cuba to seek the most sweeping extraterritorial application of its economic measures and we have demonstrated that, in doing so, the United States has exceeded the confines of its national jurisdiction under international law, has violated the sovereignty of other States and has violated as well the treaty rights of third countries. a/

The new measure of the Government of the United States goes still further in the extraterritorial extension of its own legislation by proclaiming the right of the United States, as a matter of law as well as policy, to intrude on the sovereignty of third countries and to regulate unilaterally international trade and shipping in order to achieve its goal of determining Cuba's political and economic system.

The United States attempt through this most recent blockade measure to, at the same time, determine the political and economic system of another nation (Cuba in this instance), submit all other countries to its legal jurisdiction, and unilaterally regulate international trade and shipping for

the purposes of its own political expediency, is a glaring denial of the most fundamental rights of all States under the Charter and international law and of the United Nations itself. As such, it must be firmly rejected by this Organization.

If this growing challenge goes unanswered, the United Nations and the international order premised on the principles that its Charter seeks to preserve will suffer irreparable injury.

Among the many unacceptable features of this new legislation are the following:

1. United States goals and policy

As suggested by its title, "Cuban Democracy Act of 1992", the legislation makes no pretence of being premised on United States national security or foreign policy concerns and states the dislike of the Government of the United States of the political and economic system of Cuba as the basis of its policy towards that country. It defines the objective of that policy as the establishment in Cuba of a system to the liking of the Government of the United States. It further defines the nature of the policy as that of undertaking United States Government actions to overthrow the existing Cuban system, both through direct bilateral measures and by coercing the cooperation of other States.

Indeed, the legislation prohibits the President of the United States from modifying the ban on third-country companies trading with Cuba or the ban on third-country shipping - both of which it establishes - unless he certifies to the United States Congress that Cuba is "moving towards establishing a free market economic system" and has adopted specified changes in its electoral and political system. The rights and sovereignty of third countries are thus made subordinate to the effort of the United States to dictate the internal political and economic system of Cuba.

2. Third-country companies trade with Cuba

The legislation categorically prohibits third-country companies from engaging in any transactions with Cuba if they are owned or controlled by United States nationals. It matters not that the third country's policy or law favours trade with Cuba. Nor does it matter that the companies are organized under the laws of the third country, domiciled there, managed by third-country nationals, carry out their business independent of any control or direction by their United States shareholders and wish to engage in transactions with Cuba lacking any nexus whatsoever to the United States. Furthermore, third-country companies are subject to this prohibition even if foreign nationals own as much as 60 per cent of the company's stock and United States nationals simply own the balance.

3. Third-country shipping

The legislation prohibits thir country vessels from loading or unloading goods in United States ports for 18(days after they have entered Cuban ports for trade in goods or services. Thi "blacklist" of third-country vessels trading with Cuba applies even thou there is no United States or Cuban interest in the vessel and even thou h there is no cargo on board bound to or from Cuba.

The legislation prohibits thir country vessels from entering United States ports if they are carrying go ds or passengers to or from Cuba. This prohibition prevents third-country si ps from taking on bunker fuel or other ships' stores in United States ports as well as from loading or unloading cargo.

The legislation prohibits the sl e of ships' stores of United States origin anywhere in the world to thir -country vessels carrying goods or passengers to or from Cuba. Thus, a third-country company without any United States interest, operating in a thir -country port, is prohibited by this legislation from servicing third-cou try vessels with bunker fuel or ships' stores of United States origin.

The legislation closes United S ates ports to third-country vessels carrying third-country goods from on third country to another if the goods were made in whole or in part from g ds of Cuban origin. It matters not that the goods were manufactured in a thi country, are owned by a third-country national and are being delivered to third-country national. If the third-country product contains any p duct of Cuban origin in any quantity - whether sugar, tobacco, nickel, or b medical products - the vessel is barred from entering United States ports, w ther its purpose be to load or unload cargo, take on bunker fuel or ship s res or to make repairs. Moreover, the legislation prohibits the sale of bu ker fuel or ships' stores of United States origin to those third-country essels by third-country companies anywhere in the world.

4. Sanctions against third co tries which maintain commercial relations with Cuba

The legislation declares it to b the policy of the United States "to make clear to other countries that, i determining its relations with them, the United States will take into acco nt their willingness to cooperate" with the sanctions programme of the United States against Cuba. To implement this policy, the President "should encoura e the Governments of countries that conduct trade with Cuba to restrict t eir trade and credit relations". To enable the President to do more than encourage" third countries in that direction, the legislation authorizes the President to impose specified "sanctions against countries assistin Cuba". Significantly, the definition of "assistance" to Cuba which would s bject third countries to these "sanctions" includes ordinary trade i the United States, in its own unilateral judgement, considers the t rms of that trade to be "more favorable than that generally available in the pplicable market".

5. Continued blockade of medicines

The legislation reconfirms the prohibition of the United States against persons subject to the jurisdiction of the United States selling medicines to Cuba. It goes further, however, in that it even seeks to discourage third countries from providing medical assistance to Cuba.

Humanitarian donations of medicines to the Government of Cuba will make the third country subject to Presidentially imposed sanctions authorized by the legislation. Similarly, sales to the Government of Cuba or even to Cuban non-governmental organizations on terms the United States considers to be more favourable than normally available in the applicable market would make the third country subject to the same sanctions. Only if the United States - not the third country - conducts on-site inspections in Cuba of the medicines' distribution will the third country be immune from such sanctions.

6. Continued blockade of food

The legislation reconfirms the prohibition of the United States against any sale of food or foodstuffs to Cuba by persons subject to the jurisdiction of the United States. Although humanitarian donations to non-governmental organizations are permitted, it is evident that only the unimpeded access of Cuba to food and foodstuffs on a commercial basis can have a substantial effect on the welfare of the Cuban population.

Just as the legislation seeks to discourage third-country sales and donations of medicines to Cuba, so does the legislation seek to discourage third-country sales or donations of foods and foodstuffs. Donations of food to the Government of Cuba would make a third country subject to Presidentially imposed sanctions authorized by the legislation. So, too, would sales to the Government of Cuba or to non-governmental organizations on terms the United States considers to be more favourable than generally available in the applicable market.

7. United States funding of political opposition in Cuba

This legislation authorizes the President of the United States to provide "assistance" to groups within Cuba opposed to the current political system. This open interference in the internal affairs of a sovereign State is made even more striking by the fact that the United States blockade, at the same time, prohibits United States citizens from providing assistance - whether in the form of donated funds, supplies, training or services - to any Cuban institution, whether governmental or non-governmental. This categorical prohibition applies even to any assistance United States persons might wish to offer Cuba in support of any development project, whether in the cultural, educational, health or other fields.

Notes

a/ A/46/193/Add.7, 13 September 1991 and A/46/599, 25 October 1991.

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ADMINISTRATIVE AND BUDGETARY ASPECTS OF THE FINANCING OF THE UNITED NATIONS PEACE-KEEPING OPERATIONS

Support account for peace-keeping operations

Report of the Secretary-General

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III. Support account for peace-keeping operations: income and expenditure for the periods from 1 May 1990 to 31 December 1991 and for 1 January to 31 December 1992 as at 30 September 1992 .. 15

I. INTRODUCTION

1. The support account for peace-keeping operations was established effective 1 January 1990 under the terms of paragraph 9 of General Assembly resolution 45/258 of 3 May 1991. The operation of the account became effective on 1 May 1990 by incorporating the resources relating to the overload posts that were being funded from the separate budgets of the five existing peace-keeping operations financed, at that time, outside the scope of the regular budget, namely, the United Nations Disengagement Orbserver Force (UNDOF), the United Nations Peace-keeping Force in Cyprus (UNFICYP), the United Nations Interim Force in Lebanon (UNIFIL), the United Nations Iran-Iraq Military Observer Group (UNIIMOG) and the United Nations Observer Group for Central America (ONUCA). The account was intended to meet the needs at Headquarters for the support of those five ongoing peace-keeping operations as well as some of the immediate additional workload associated with the pre-implementation phase of prospective operations. It was envisaged that additional posts would be provided from the support account to meet the increased workload caused by new peace-keeping operations.

2. By way of background, it is recalled that in a report of 5 December 1989 (A/C.5/44/45), the Secretary-General had put forward proposals to the Advisory Committee on Administrative and Budgetary Questions that included, inter alia, a change in the arrangements that were in place at the time for the provision of the overload posts authorized to supplement the provisions under the regular budget for managerial, legal, technical and administrative support and for backstopping of good offices and peace-keeping operations. The proposals would result in the apportionment of the cost of overload posts in a more equitable manner through the inclusion in all future peace-keeping operation budgets of a financial provision based on a fixed percentage rate applied to the total cost of the civilian component of a mission. Those financial provisions would be maintained in the separate account for support of peace-keeing operations against which temporary posts would be established. In addition, it was proposed that any balance remaining at the end of the financial period would remain in the account for the purpose of providing continuing support to the offices dealing with peace-keeping matters during periods of peak workload, particularly when new peace-keeping operations must be established at short notice.

3. In its response to the Secretary-General's proposals (A/44/868, annex), the Advisory Committee indicated, inter alia, that the establishment of the account was, in principle, attractive and requested that the mechanism for future financing of the overload posts be formulated in a way that would facilitate proper scrutiny by the Advisory Committee and the General Assembly and that the proposal be resubmitted at a later stage. A follow-up report (A/CN.1/R.1121) was presented to the Advisory Committee at its 1990 spring session on the basis of which the Committee, while expressing certain reservations, concurred with the interim establishment of a support account for peace-keeping operations in 1990, pending approval by the General Assembly.

4. In his report of 18 September 1990 to the General Assembly (A/45/493), the Secretary-General proposed, as a first step, that beginning in 1991 the financing of the overload posts would be through the inclusion of a provision of an amount equal to 8.5 per cent of the cost of the civilian component of each mission in the respective budgets of peace-keeping operations. That percentage was considered appropriate since it was derived from the relationship of the aggregate cost of the overload posts existing at that time to the aggregate cost of the civilian mission posts approved for the five peace-keeping operations. Moreover, it was noted that the five peace-keeping operations were made up of three that had military forces and two that were observer missions. It was further suggested that the proposed financing method be reviewed at the end of the first two years, in the light of the actual experience gained during the operation of the support account and taking into consideration the amounts made available to the account from peace-keeping budgets approved by the Assembly.

5. In paragraph 14 of its report to the General Assembly (A/45/801), the Advisory Committee indicated that it had some reservations regarding the application of an "across the board" percentage that might not reflect the varied requirements of different peace-keeping operations, both current and future. Under the circumstances, the Committee took note of the percentage recommended by the Secretary-General and believed that whatever percentage was approved by the Assembly should be seen as a first step. The Committee further indicated that it intended to keep both the percentage approved and the methodology on which it was based under review and that it would recommend changes in methodology as necessary. The Committee indicated that it would review each request for posts to ensure that every effort had been made to achieve savings through consolidation of functions whenever possible in the light of the greater flexibility brought about by the establishment of the support account.

II. INCREASES IN PEACE-KEEPING OPERATIONS

6. Since the establishment of the support account for peace-keeping operations, seven of eight additional peace-keeping missions (excluding the United Nations Operation in Somalia (UNSOM) contributed to the account and two missions have ceased to contribute. The current status is as follows:

Operation	Status
UNFICYP	Continuing
UNDOF	Continuing
UNIFIL	Continuing
UNIIMOG	Terminated on 28 February 1991

Operation	Status
United Nations Iraq-Kuwait Observation Mission (UNIKOM)	Continuing
United Nations Angola Verification Mission (UNAVEM)	Started on 3 January 1989 and was enlarged as UNAVEM II on 1 June 1991
United Nations Mission for the Referendum in Western Sahara (MINURSO)	Started on 17 May 1991
United Nations Observer Mission in El Salvador (ONUSAL)	Started on 1 July 1991
United Nations Advance Mission in Cambodia (UNAMIC)	Started on 1 November 1991 and was merged with UNTAC on 15 March 1992
ONUCA	Terminated on 17 January 1992
United Nations Protection Force (UNPROFOR)	Started on 21 February 1992
United Nations Transitional Authority in Cambodia (UNTAC)	Started on 15 March 1992
UNOSOM	Started on 1 May 1992

7. The present report provides information on the support account during the first two years of its operation through 31 December 1991. It also provides an indication of the results arising from the use of a single percentage in calculating the amount included in each of the peace-keeping operations for the support account and of the projected use of the account during 1992.

III. INCREASES IN RESOURCES

Additional resources provided during 1991

8. Initially 92 overload posts were incorporated in the support account. These consisted of 41 posts in the Professional category and above and 51 in the General Service category. On 21 December 1990, the Advisory Committee agreed to the request of the Controller for the giving up of two General Service/Field Service posts at Geneva in order to establish a post at the D-1 level in the Department of Peace-keeping Operations. That agreement reduced the number of peace-keeping support account posts to 91, as shown in column 2 of annex I to the present report. Fifty of these posts were encumbered by staff members with permanent contracts.

9. By its letter of 14 November 1991, the Advisory Committee concurred in the establishment of 35 of 39 additional posts requested on 6 November 1991. The 35 new posts consisted of 3 P-5, 6 P-4, 5 P-3 and 21 GS (5 at the principal level) and were distributed among the following offices:

(a) Internal Audit Division: 1 P-4;

(b) Peace-keeping Financing Division: 1 P-4 and 1 GS (principal level);

(c) Accounts Division: 1 P-5 and 1 GS;

(d) Treasury Division: 1 GS;

(e) Staff Administration and Training Division: 1 GS;

(f) Medical and Employee Assistance Division: 1 P-4 and 1 GS;

(g) Buildings and Commercial Services Division: 1 P-4, 1 P-3 and 3 GS;

(h) Field Operations Division: 1 P-5, 2 P-4, 4 P-3, 4 GS (principal level) and 9 GS;

(i) Advisory Committee on Administrative and Budgetary Questions: 1 P-5 (one half funded from reimbursement for support to extrabudgetary administrative structures).

This new authorization, which took effect on 1 January 1992, increased the number of peace-keeping support account posts from 91 to 126, as shown in annex I, column 3.

10. On 14 December 1991, the Advisory Committee concurred in the request of the Controller of 9 December 1991 for 48 work-months of temporary assistance consisting of 12 work-months at the P-3 level and 36 work-months at the General Service level. This temporary assistance was provided to the Field Operations Division to meet peak workload requirements.

Additional resources provided during 1992

11. By his letter of 12 February 1992, the Controller requested the approval of the Advisory Committee to utilize an amount of $2,845,300 from the support account to cover the cost of rental of some 64,710 square feet of office space in the Alcoa building, including utilities and certain non-recurrent costs for minor alterations and acquisition of furniture and fixtures during the biennium 1992-1993. The space was required in order to compensate for the accommodation provided in other Headquarters buildings for mission support personnel for backstopping peace-keeping operations. On 18 February 1992, the Advisory Committee concurred in the request for a commitment authority for the rental of the space, on the understanding that the amount requested should be regarded as a ceiling. The Committee was not, however, convinced that the Organization's proposal to enter into a six-year lease with the Alcoa building was the most suitable alternative, nor was it convinced of the need to spend

$500,000 for the acquisition of furniture and fixtures. The Committee, recalling its earlier intention to consider whether the support account should be charged for common services, in the context of the report on the operation of the support account, indicated that it was not yet prepared to take a decision on the proposed method of financing for the rental of office space in the Alcoa building. In addition, the Advisory Committee requested that the rental options be reviewed and a report therein be presented at a later time.

12. The Controller, on 28 February 1992, sought the concurrence of the Advisory Committee for an additional 138 work-months of temporary assistance, consisting of 12 work-months at the D-1 level, 3 work-months at the P-5 level, 21 work-months at the P-4 level, 10 work-months at the P-3 level and 92 work-months at the General Service level. In addition, three new posts (2 P-4 and 1 GS) were requested. In response to that request the Advisory Committee agreed to the granting of 106 work-months of temporary assistance, providing for 3 work-months at the P-5 level, 21 work-months at the P-4 level, 6 work-months at the P-3 level and 76 work-months at the GS level. The Committee did not approve the establishment of the three new posts requested. The distribution of the approved temporary assistance was as follows:

(a) Office of Legal Affairs: 1 P-4 for 12 months;

(b) Field Operations Division: 1 P-5, 3 P-4, 2 P-3 and 20 GS for 3 months each;

(c) Medical and Employee Assistance Division: 1 GS for 4 months;

(d) Department of Administration and Management: 1 GS for 12 months.

13. By his letter of 12 May 1992, the Acting Controller requested the concurrence of the Advisory Committee for the establishment of nine additional posts for the following offices:

(a) Peace-keeping Financing Division: 1 D-2;

(b) Field Operations Division: 3 P-3 and 5 GS;

In addition, a request was included for 288 work-months of temporary assistance (equivalent to 24 posts) over a period of 12 months as follows:

(c) Internal Audit Division: 2 P-4 and 2 P-3;

(d) Accounts Division: 3 GS;

(e) Financial Management and Control Division: 1 GS;

(f) Field Operations Division: 2 P-3 and 5 GS;

(g) Buildings and Commercial Services Division: 1 P-4, 1 P-3, 1 P-2 and 3 GS;

(h) Electronic Service Division: 3 GS.

14. On 20 May 1992, the Advisory Committee concurred with the establishment of the nine new posts as well as the 288 work-months of temporary assistance requested.

15. As a result of the approvals by the Advisory Committee, the total number of authorized posts financed by the support account for peace-keeping operations increased from 126 to 135. The summary distribution of the 135 posts is shown in column 4 of annex I, while a detailed distribution by office and post level is provided in annex II.

16. Currently, of the 135 posts authorized from the support account, 60 are encumbered by staff members with permanent contracts, 54 are filled by staff members with fixed-term contracts and the remainder are filled by staff members with short-term contracts.

IV. FINANCIAL STATUS OF THE ACCOUNT FROM INCEPTION TO 31 DECEMBER 1992 AS AT 30 SEPTEMBER 1992

17. The income credited to the account since it became operational, from 1 May 1990 to 31 December 1991, amounted to $12,846,492, inclusive of $396,132 derived from interest income as at 31 December 1991. The expenses relating to the 91 posts authorized during the same period ending 31 December 1991 amounted to $9,655,139. In addition, an amount of $800,000 was set aside as a partial operating reserve towards the building up of a reserve equal to 20 per cent of annual estimated income in accordance with the policies formalized for such accounts and effective 1 January 1982. This resulted in an unencumbered balance in the account at 31 December 1991 of $2,391,353. Details of the income received and expenses incurred are shown in annex III, column 1.

18. As at 30 September 1992, additional income amounting to $12,100,940 was credited to the account. That amount reflects the resources approved within the budgets of existing peace-keeping missions by the General Assembly or as modified by the Advisory Committee. In addition, interest and miscellaneous income amounted to $177,960, bringing the total income received to $12,278,900. The expenses relating to the 135 posts and temporary assistance authorized as well as for the rental of office space for the period from 1 January to 31 December 1992 is currently estimated at $10,909,600 consisting of actual expe[illegible]ture of $8,130,700 from 1 January to 30 September 1992 and an amount of $2,778,900 representing the projected requirement from 1 October to 31 December 192 for staff costs. An additional sum of $1,300,000 is required in the operating reserve for 1992, thus increasing the total reserve to $2,100,000, to meet the reserve requirement in the account. A breakdown of the income received and actual and projected expenditure for 1992 is shown in column 2 of annex III.

19. Column 3 of annex III provides the combined income and expenditure, and unencumbered balance from inception to 31 December 1992. As indicated in the annex, as at 30 September 1992 the projected unencumbered balance in the account at the end of 1992 is estimated at $2,460,653.

V. OBSERVATIONS

20. The support account for peace-keeping operations is providing the resources required at Headquarters to cope with the increased number of good offices, peacemaking, peace-keeping operations and other related activities. The Departments of Peace-keeping Operations and Administration and Management, the Executive Office of the Secretary-General and the Office of Legal Affairs are receiving such resources.

21. In all cases, requests for staff resources, whether by way of new posts or temporary assistance, require the authorization of the Advisory Committee. It should be noted that the additional resources are usually approved some time after the offices have been requested to respond to additional responsibilities. Consequently, the shortage of staff is most critical during the periods of intense activity when new peace-keeping operations are being established.

22. The posts funded from the support account for peace-keeping operations are temporary. They are provided to the offices at Headquarters directly involved with peace-keeping matters to carry out their "core" responsibilities in connection with peace-keeping. The number of such posts will vary over time depending on their need. Temporary assistance is also provided to enable offices to meet additional workload generated during peak periods.

23. In order to lessen the difficulties encountered by offices requiring additional staff resources, it is now proposed that consideration be given to authorizing the Secretary-General, through the Controller, to approve the use of temporary assistance when there is a demonstrated need for such resources.

24. As indicated in paragraph 5 above, the Advisory Committee in its report (A/45/801) indicated reservations as to the application of an "across the board" percentage for the funding of the account. While it is recognized that no two peace-keeping operations are identical, it can be seen that the use of the approved percentage has not provided an excessive level of resources to the account. The full common service costs attributable to the posts financed from the support account would have resulted in an additional amount of $1,138,400 being charged to the account apart from the recorded expenditure for rental. Those additional costs are currently absorbed by the regular budget. It is proposed therefore, that consideration be given to charging full common service costs to the support account.

VI. RECOMMENDATIONS

25. It is recommended that the Secretary-General, through the Controller, be allowed, when the need arises, to authorize a limited amount of temporary assistance. A report indicating, ex post facto, the temporary assistance authorized would be submitted to the Advisory Committee within two months of authorization. In authorizing the temporary assistance, the criteria set out in paragraph 14 of the report of the Secretary-General (A/45/493) as the basis for requesting new posts from the support account would be met.

26. It is further recommended that all applicable common service costs be charged to the support account, beginning in January 1994.

VII. ACTION TO BE TAKEN BY THE GENERAL ASSEMBLY

27. The actions to be taken by the General Assembly at its forty-seventh session in connection with the support account for peace-keeping operations are:

(a) The maintenance of the current funding arrangements for the support account through the provision in each of the budgets of the peace-keeping operations of an amount equal to 8.5 per cent of the cost of the civilian components of the missions;

(b) A decision authorizing the Secretary-General, through the Controller, to approve temporary assistance in accordance with the conditions set out in paragraph 25 above;

(c) A decision regarding common service costs being charged to the support account beginning in 1994.

ANNEX I

Support account for peace-keeping operations

Distribution of authorized posts by office

	1 May 90 (1)	1 January 91 (2)	1 January 92 (3)	1 June 92 (4)
Executive Office of the Secretary-General	4	4	4	4
Department of Peace-keeping Operations	9	10	10	10
Office of Legal Affairs	1	1	1	1
Department of Administration and Management				
Internal Audit Division	2	2	3	3
Office of Programme Planning, Budget and Finance				
Peace-keeping Financing Division	11	11	13	14
Accounts Division	4	4	6	6
Treasury Division	2	2	3	3
Office of Human Resources Management				
Recruitment and Placement Division	2	2	2	2
Staff Administration and Training Division	3	3	4	4
Medical and Employee Assistance Division	-	-	2	2

	1 May 90 (1)	1 January 91 (2)	1 January 92 (3)	1 June 92 (4)
Office of General Services				
Buildings and Commercial Services Division	13	13	18	18
Field Operations Division	37 a/	35	55	63
Electronic Services Division	4	4	4	4
Advisory Committee on Administrative and Budgetary Questions	-	-	1 b/	1 b/
Total	92	91	126	135

a/ Includes 2 GS/FS posts at the United Nations Office at Geneva.

b/ One half funded from reimbursement for support to extrabudgetary administrative structures.

ANNEX II

Support account for peace-keeping operations

Distribution of authorized posts by office and post level
beginning on 1 June 1992

	D-2	D-1	P-5	P-4	P-3	P-2/1	GS Principal level	GS Other level	Total
Executive Office of the Secretary-General	1	-	1	1	-	-	-	1	4
Department of Peace-keeping Operations	-	1	1	3	-	-	-	5	10
Office of Legal Affairs	-	-	-	-	1	-	-	-	1
Department of Administration and Management									
Internal Audit Division	-	-	-	3	-	-	-	-	3
Office of Programme Planning, Budget and Finance									
Peace-keeping Financing Division	1	-	1	5	1	-	1	5	14
Accounts Division	-	-	1	2	1	-	-	2	6
Treasury Division	-	-	-	-	-	-	-	3	3

/...

	D-2	D-1	P-5	P-4	P-3	P-2/1	GS Principal level	GS Other level	Total
Office of Human Resources Management									
Recruitment and Placement Division	-	-	-	-	1	-	-	1	2
Staff Administration and Training Division	-	-	-	2	-	-	-	2	4
Medical and Employee Assistance Division	-	-	-	1	-	-	-	1	2
Office of General Services									
Buildings and Commercial Services Division	-	-	-	1	5	-	-	12	18
Field Operations Division	-	-	3	10	11	-	4	35	63
Electronic Services Division	-	-	-	-	-	1	-	3	4
Advisory Committee on Administrative and Budgetary Questions	-	-	1 a/	-	-	-	-	-	1
Total	2	1	8	28	20	1	5	70	135

a/ One half funded from reimbursement for support to extrabudgetary administrative structures.

ANNEX III

Support account for peace-keeping operations

Income and expenditure for the periods from 1 May 1990 to 31 December 1991 and for 1 January to 31 December 1992 as at 30 September 1992

(United States dollars)

	1990/1991 (1)	1992 (2)	Total (3)
I. Income			
UNFICYP	1 205 700	506 000	1 711 700
UNDOF	902 100	532 600	1 434 700
UNIFIL	3 947 570	1 701 830	5 649 400
UNIIMOG	784 500	-	784 500
ONUCA	1 657 000	204 300	1 861 300
UNIKOM	1 144 390	982 410	2 126 800
MINURSO	1 785 000	238 000	2 023 000
ONUSAL	544 000	985 000	1 529 000
UNAVEM II	406 500	1 272 500	1 679 000
UNAMIC/UNTAC	100 600	4 248 300	4 348 900
UNPROFOR	-	1 430 000	1 430 000
Interest and miscellaneous income	369 132	177 960	547 092
Total (I)	12 846 492	12 278 900 a/	25 125 392
II. Less expenditure and reserve			
Salaries	6 916 775	5 806 300	12 723 075
Temporary assistance	-	1 285 900	1 285 900
Common staff costs	2 738 364	2 693 700	5 432 064
Rental of premises	-	1 123 700	1 123 700
Operating reserve	800 000	1 300 000	2 100 000
Total (II)	10 455 139	12 209 600 b/	22 664 739
Unencumbered fund balance (I) less (II)	2 391 353	69 300	2 460 653

a/ Excludes an amount of $120,100 to be credited in 1993.

b/ Includes projected expenditure from 1 October to 31 December 1992 in the amount of $2,778,900.

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Forty-seventh session
Agenda item 124

ADMINISTRATIVE AND BUDGETARY ASPECTS OF THE FINANCING OF THE UNITED NATIONS PEACE-KEEPING OPERATIONS

Support account for peace-keeping operations

Report of the Secretary-General

Corrigendum

Paragraph 12

(a) Replace the third sentence with the following:

In response to that request, the Advisory Committee agreed to the granting of 118 work-months of temporary assistance, providing for 3 work-months at the P-5 level, 33 work-months at the P-4 level, 6 work-months at the P-3 level and 76 work-months at the General Service level.

(b) Add a new subparagraph (e) to read:

(e) Department of Peace-keeping Operations: 1 P-4 for 12 months.

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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Afghanistan

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Afghanistan prepared by Mr. Felix Ermacora, Special Rapporteur of the Commission on Human Rights, in accordance with Commission on Human Rights resolution 1992/68 of 4 March 1992, and Economic and Social Council decision 1992/240 of 20 July 1992.

ANNEX

Interim report on the situation of human rights in Afghanistan prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1992/68 and Economic and Social Council decision 1992/240

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I. INTRODUCTION

1. The Special Rapporteur was first appointed to examine the human rights situation in Afghanistan in 1984 by the Chairman of the Commission on Human Rights, who had been requested to do so by the Economic and Social Council in its resolution 1984/37 of 24 May 1984. Since then, his mandate has been renewed regularly by the Commission, in resolutions endorsed by the Economic and Social Council, in which the Special Rapporteur was requested to report to the Commission and to the General Assembly. So far, he has submitted eight reports to the Commission (E/CN.4/1985/21, E/CN.4/1986/24, E/CN.4/1987/22, E/CN.4/1988/25, E/CN.4/1989/24, E/CN.4/1990/25, E/CN.4/1991/31 and E/CN.4/1992/33) and seven to the General Assembly (A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669, A/45/664 and A/46/606).

2. At its forty-eighth session, the Commission on Human Rights decided, by resolution 1992/68 of 4 March 1992, to extend the mandate of the Special Rapporteur for one year, an extension which was confirmed by the Economic and Social Council in its decision 1992/240 of 20 July 1992.

3. At its forty-sixth session, after considering the report submitted to it by the Special Rapporteur, the General Assembly by resolution 46/136 of 17 December 1991, decided to keep under consideration, during its forty-seventh session, the situation of human rights in Afghanistan in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

4. In fulfilling the mandate entrusted to him in resolution 1992/68 of the Commission on Human Rights, the Special Rapporteur encountered particular difficulties in preparing his mission of inquiry in the area. This was partly because of the unprecedented developments which took place in Afghanistan after Mr. Mohammed Najibullah had decided to step down from his position as President of the Republic. It was also because the Economic and Social Council had taken the decision, which could be done only after a substantive discussion, to confirm the Commission resolution extending the mandate of the Special Rapporteur on 20 July 1992. The Special Rapporteur was therefore unable to undertake any consultations concerning his mandate prior to that date.

5. Subsequent to the renewal of his mandate by the Commission on Human Rights at its forty-eighth session, and in accordance with past practice, the Special Rapporteur again visited the area in order to obtain the most broadly based information possible. He visited Pakistan from 13 to 18 September and Afghanistan on 16 and 17 September 1992.

6. Accordingly, the Special Rapporteur has the honour to submit his interim report to the General Assembly in compliance with Commission on Human Rights resolution 1992/68 and Economic and Social Council decision 1992/240.

7. During his visit to Pakistan, following the established schedule, the Special Rapporteur was received by representatives of the Ministry for Foreign Affairs and by the Chief Commissioner for Afghan Refugees. While in Islamabad, he also met with the Chargé d'affaires of Afghanistan, with representatives of the National Islamic Front of Afghanistan (NIFA) and the Hezbe Islami (Hekmatyar) political parties, with whom he exchanged views on the overall situation in the country. In addition, the Special Rapporteur had talks with representatives of various humanitarian organizations.

8. In the North West Frontier Province, the Special Rapporteur met with the Regional Commissioner for Afghan Refugees and visited the Kuwaiti Red Crescent Surgical Hospital where he was informed about the situation of patients and visited wounded persons. He also had talks with representatives of the International Committee of the Red Cross (ICRC) and various humanitarian organizations based in Peshawar as well as with private individuals. In addition, the Special Rapporteur met with the representatives of the Hezbe Islami (Hekmatyar) in Peshawar and a representative of Commander Jalalludin Haqqani, with whom he exchanged views on the overall situation in the country.

9. During his visit to Afghanistan, the Special Rapporteur was unable to visit Kabul owing to the difficult security situation prevailing there and was therefore unable to meet with officials of the Government of the Islamic State of Afghanistan. On 22 July 1992, he wrote to the President of the Islamic State of Afghanistan, Mr. Burhanuddin Rabbani, requesting the permission of the Afghan Government to visit that country. In his letter, the Special Rapporteur stated, inter alia: "The purpose of this visit would be essentially to ensure that the General Assembly is presented with a comprehensive picture of the situation of human rights in Afghanistan, including the views of the new Islamic Government on that situation". The Special Rapporteur did not receive a reply to his letter. However, he informed the diplomatic representatives of the Afghan Government in Geneva and Islamabad of his intention to visit Afghanistan and was given verbal agreement in this regard.

10. In Afghanistan, the Special Rapporteur visited on 16 September 1992 Jalalabad, in Nangarhar province, where he met with the Deputy Governor of that province and other members of the provincial shura (council) and was able to observe the situation in the province. He also met with representatives of humanitarian organizations based in Jalalabad. The Special Rapporteur met with the de-mining team of the Afghan Technical Consultants Mine Clearance Organization headed by Mr. Kefayatullah Eblagh and visited a mine-clearance site in Sorkhroab district near Jalalabad. In addition, the Special Rapporteur visited the Hadda Camp near Jalalabad where he was able to interview displaced persons who had arrived recently from Kabul.

11. On 17 September 1992, the Special Rapporteur visited Mazar-i-Sharif, in Balkh province, where he met with General Abdul Rashid Dostom, the Chief of the High Military Council of Northern Regions and the Head of the Islamic Council, and with other members of the Council, including the Chairman of the Executive Council (Shura) of Northern Afghanistan; the Deputy Chairman of the

Executive Council; General Mumin, Head of the 17th Division and commander of Kabul forces; General Helaluddin, the Head of the Air Force and Commander of the Garrison of Northern Regions; Ustad Atah, the General Deputy of the Jamiat Islami party in Mazar-i-Sharif; General Jora Beg, Commander of the Mazar-i-Sharif Garrison and of the 18th Balkh Division; General Khair Mohammed, Deputy Head of a Working Group of the High Military Council of Northern Regions; Ustad Shaikh Muhaqiq, representative of the Hezbe Wahadat party; Mr. Nasim Mehdi, a commander belonging to the Hezbe Islami party in Balkh; Mr. Mohammed Aalam, a commander belonging to the Jamiat Islami party in Balkh; General G. Hussain Pana, Commander of the Security Office in Mazar-i-Sharif; Mr. Abdul Rahman Ansari, the Governor of Balkh Province; a general who is in charge of cultural affairs; the Deputy Head of the 18th Balkh Division; and the President of the Public Health Department of Mazar-i-Sharif. The Special Rapporteur was also able to conduct interviews with displaced persons who had arrived recently from Kabul. In addition, he met with representatives of humanitarian organizations based in Mazar-i-Sharif.

12. In March and August 1992, the Special Rapporteur also heard testimonies and held consultations in Europe relating to his mandate. On 2 October 1992, he met with Mr. Jalil Shams, the Deputy Minister for Foreign Affairs of the Islamic State of Afghanistan, during the latter's official visit to Austria. In addition, the Special Rapporteur met on 4 November 1992, at Vienna, Mr. Mohammed Anwar, the Minister for Health and the Disabled of the Islamic State of Afghanistan.

13. The Special Rapporteur wishes once again to express his sincere appreciation to the governmental authorities of Pakistan and the provincial authorities of the areas he visited in Afghanistan for the valuable assistance and full cooperation which they extended to him. The Special Rapporteur particularly appreciated the possibility given to him to visit the Nangarhar and Balkh provinces in Afghanistan. In this respect, he once again wishes to thank the Office of the Coordinator for Humanitarian and Economic Assistance Programmes Relating to Afghanistan (UNOCA) for its most efficient logistical assistance, without which these visits could not have been possible.

14. For the purpose of drafting this report, in addition to gathering information during the visits to Pakistan and Afghanistan, the Special Rapporteur followed the course of events throughout the period covered by the report and systematically evaluated written and oral information relevant to his mandate received from various individuals and organizations. He has also consulted various reports and studies prepared by United Nations bodies and specialized agencies, as well as those by non-governmental organizations which deal with the humanitarian and human rights aspects of the Afghan problem. Subsequent to the adoption of Commission on Human Rights resolution 1992/68, renewing his mandate, the Special Rapporteur followed the course of events through the period covered by this report, namely, March to October 1992. In his method of reporting, he has continued to place emphasis on that period.

15. Section II of this report contains general observations on the situation of human rights in Afghanistan in the general political context. In

section III, specific human rights problems in Afghanistan are analysed. Section IV contains conclusions and recommendations based on the Special Rapporteur's analysis of the available information.

II. GENERAL OBSERVATIONS CONCERNING THE SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

A. Political events

16. In his report to the Commission on Human Rights at its forty-eighth session (E/CN.4/1992/33), the Special Rapporteur referred to the statement on Afghanistan issued on 21 May 1991 by the Secretary-General of the United Nations, Mr. Pérez de Cuellar, which contained a five-point peace plan (see A/46/606, annex I). He also mentioned the joint statement of the United States of America and the Soviet Union, of 13 September 1991, on the simultaneous cut-off of weapons deliveries to the Afghan parties by 1 January 1992 (the so-called "negative symmetry").

17. The Special Rapporteur informed the Commission that he was received on 4 January 1992 by the then President of the Republic of Afghanistan, Mr. Mohammed Najibullah, who, following an appeal made by the General Assembly in its resolution 46/136 and a request to the same effect formulated by the Special Rapporteur, commuted 114 death sentences which had been imposed against persons who are alleged to have participated in an attempted coup d'état in March 1990. The President of Afghanistan confirmed his decision by Decree No. 1355, of 28 January 1992, commuting the death sentences of the insurgents to 20 years' imprisonment.

18. On 27 January 1992, the Secretary-General, Mr. Boutros Boutros-Ghali, referring to the five-point peace plan, announced that he had asked his Personal Representative on Pakistan and Afghanistan to undertake a further round of intensive consultations in order to finalize arrangements for a gathering of Afghans which would have the task of agreeing upon a transition period, leading to the establishment of a broad-based Government in Afghanistan through free and fair elections.

19. The Representative of the Secretary-General announced the conditions for the holding of this gathering at a press conference held at Geneva. It was to be called an Ijlas Buzurg and he emphasized that he had obtained the agreement of the Governments of Afghanistan, Iran, Pakistan, the Russian Federation and the United States concerning this plan for peace and the creation of a transitional Government.

20. In a statement to the press dated 11 February 1992, the Representative of the Secretary-General expressed his satisfaction with the outcome of the meetings he had held at Kabul and with regard to a meeting held on 19 February at Mashad, Islamic Republic of Iran, where he met with 50 commanders of the resistance from western Afghanistan and with a large group of clergy, tribal elders and intellectuals. He also met with three Central Asian leaders. The

press communiqué stressed that throughout his visit to the Islamic Republic of Iran, his interlocutors expressed their deep anxiety about growing ethnic tensions inside Afghanistan.

21. In an article which appeared in the Frontier Post newspaper on 27 February 1992, it was indicated that Mr. Rabbani had rejected the United Nations five-point peace plan because it did not spell out whether President Najibullah would have a role in the transitional government. Mr. Rabbani had already expressed this opinion to the Special Rapporteur in January 1992.

22. After a lengthy series of discussions between the Representative of the Secretary-General and Afghan representatives, the then President Najibullah declared that the Representative of the Secretary-General had persuaded him to issue a public declaration that he would step down once an interim Government was formed, and that all executive powers would be transferred to the interim Government as from the first day of the transition period. According to the Kabul Times of 17 March 1992, the President handed over a list of 150 persons which included members of the Watan (Homeland) and other political parties inside the country, persons not belonging to any party, prominent public figures, commanders, religious leaders and tribal chiefs. Excerpts of the speech pronounced by the Representative of the Secretary-General on this occasion were published in the Kabul Times of 19 March.

23. President Najibullah's announcement on 18 March 1992 that he would step down from his position created a power vacuum in Afghanistan. Although he did not leave the country, Mr. Najibullah was no longer present on the country's political scene. An alliance was formed in northern Afghanistan between dissident military commanders and the mujahidin. A National Islamic Movement was created in Mazar-i-Sharif. The alliance is headed by General Abdul Rashid Dostom and accounts for more than half the country's military strength, including the regular armed forces. The central Government has also lost its influence in other provinces.

24. Referring to the five-point peace plan, a spokesman of the Republic of Afghanistan declared that Najibullah, former President of Afghanistan, had illegally resigned and escaped contrary to the Constitution, and that the Government of the Republic of Afghanistan, its parliament and its judicial power were carrying out grave and national tasks to serve the people. The Executive Body of the Watan party stated, inter alia, "Najibullah, the former President of the Republic of Afghanistan and Chairman of the Watan party, used to verbally show his preparedness for the peaceful solution of the Afghan issues but, in practice, when the process of the political solution has reached its sensitive phase he attempted to flee in the night of 26-27 Hamal (15-16 April) with the intention of disturbing the stability and creating a vacuum of power, dispersion and panic, but was prevented by the country's alert armed forces. Again, heedless of the Constitution and the interests of the people, he escaped ...".

25. In this connection, the former Afghan Minister for Foreign Affairs, Mr. Abdul Wakil, stated the following:

"Regrettably, at the last moment, contrary to the expectations of the leadership of the State of the Republic of Afghanistan and the Watan Party, Najibullah, the President of the Republic of Afghanistan, without consulting and without taking into account all the State and party norms, tried to escape last night ... By doing this he wanted to create a new atmosphere of panic, an atmosphere which he repeated time and again, i.e., a power gap here, under the prevailing delicate conditions that the people of Afghanistan and the world at large aspire for peace restoration in Afghanistan. Evaluations carried out by the leadership of the State of the Republic of Afghanistan and the Watan Party indicated that Najibullah had failed to match his words with his deeds. No one, no organization, no individual or group had threatened or endangered the security and activities of Najibullah; however, fearing of peace restoration and the coming to Afghanistan of the impartial forces and afraid to be responsible for his deeds before the people of Afghanistan he tried to act contrary to the expectations of the leadership of the State and the Watan Party which indeed is a matter of concern for us. I carried out my last meeting with Najibullah at 9 last night. The best example of witness I can give that nothing threatened Najibullah is the fact that the car carrying Najibullah last night was stopped by the armed forces. They could have resorted to an adventuristic action and fired at him. However, despite his insistence to give him way to flee from the country, they told him that they had not received any information regarding his leaving the country and they advised him to return to his residence. Therefore, wherever he was willing to go he did go. This issue shall be discussed later. There he is secure and safe. This was the best example that no one wanted to threaten him. Anyway, representing the State, the Watan Party, I assure you and the countrymen that there exists no process that shall aggravate tension, instability and disorder in the Republic of Afghanistan, especially in Kabul and you shall not be witness to such signs".

26. An amnesty decree announcing the pardon of the remainder of prison terms was issued the same day.

27. The Government of the Republic of Afghanistan was formally the central government of that country until 14 May 1992 and was composed of members of the former Government under the chairmanship of the Prime Minister, Mr. Fazlhaq Khaliqyar, and the Acting President of the Republic, Mr. Abdul Rahim Hatif. After this date, the "Islamic State took over in Kabul" on the basis of the Peshawar Accord (appendix I) concluded by opposition parties on 24 April 1992. That agreement established a structure and timetable for the period of transition of the Islamic State of Afghanistan. A body comprising 51 persons headed by Mr. Sibghatullah Mojaddidi, the Jihad (Holy War) Council, was to take power for two months from the current rulers. The Kabul Times of 14 May 1992 provided a detailed account of the ceremonies of transfer of power.

28. It was further decided that after two months Mr. Burhanuddin Rabbani would become the President of the Transitional Islamic State of Afghanistan and the head of the Leadership Council, composed of mujahidin leaders who

signed the Peshawar Accord, for four months (i.e., until October 1992). He was to take office officially when the two months of Mr. Mojaddidi's tenure had elapsed. Ministerial posts were distributed among different political parties from the former opposition.

29. At its first meeting, the Leadership Council took the following decisions:

(a) Dissolution of the cabinet of the former regime;

(b) Abolition of legislation and resolutions that run counter to the Islamic Shariah;

(c) Dissolution of both houses of the National Assembly;

(d) Dissolution of the State Security Ministry with all its subordinate structures;

(e) Dissolution of the Watan party;

(f) Formation of a special tribunal to bring to justice the traitors, the aggressors and to keep public safety;

(g) Declaration as a public holiday of 28 April as the festival of victory of the Muslim nation of Afghanistan, hailing the arrival of the members of the Jihad Council, headed by esteemed Professor Hazrat Sibghatullah Mojaddidi, representor of the Islamic State of Afghanistan, and delegation of power to this Council;

(h) Declaration of 4 May as the day of martyrs and the disabled, hailing the arrival of the leaders of the Jihad Tanzims;

(i) Confirmation of the general amnesty issued by the Jihad Tanzims and the Islamic State as regards what is due to God;

(j) Any country intending to aid Afghanistan should channel it through the central State.

30. With regard to human rights, two different statements concerning amnesty were issued during this six-month period. In the course of his tenure, Mr. Mojaddidi issued a general amnesty decree. Upon taking office, Mr. Rabbani also issued an amnesty decree which did not cover, however, "persons who have committed crimes".

31. During the formation of the transitional Government, different armed groups had entered Kabul. The March-June 1992 issue (No. 132/135) of the Afghan Information Centre's Monthly Bulletin contains a detailed description of the forces stationed in and around Kabul at the time:

Forces stationed in Kabul

Militia units of General Dostom
Hezbe Wahadat
Supervisory Council (Jamiat)
Kabul garrison of former regime forces
Harakat (Mohsini)
Ittehad-e-Islami (Sayyaf)
Harakat (Mohammadi)
Hezbe (Khales, Haqqani)
President Mojaddidi's forces
Mahaz (Gailani)

Forces stationed around Kabul

South:	Hezbe Islami (Hekmatyar), Hezbe Islami (Khales, Haqqani), Ahmazai tribes
East:	Harakat (Mohammadi), Mahaz, Jabha, Hezbe (Khales), Ittehad (Sayyaf)
South-west:	Harakat (Mohsini), Ittehad, Mahaz, Hezbe Wahadat, Hezbe Islami (Khales)
West:	Ittehad, Supervisory Council (Jamiat), Harakat (Mohammadi), Mahaz, Harakat (Mohsini), Hezbe (Khales), Hezbe (Hekmatyar)
North:	Supervisory Council (Jamiat), Hezbe (Hekmatyar), Ittehad (Sayyaf), militia of General Dostom

32. In addition to the forces mentioned above, it was indicated that thousands of undercover armed agents of the former secret police (KHAD) continued to be stationed in Kabul and the provinces.

33. The military forces formed by the remnants of the regular army and the mujahidin of Commander Massoud were ultimately given a deadline by the Hezbe Islami (Hekmatyar) by which to leave the security belt around Kabul. Before the ultimatum had expired, the mujahidin belonging to all groups entered the Afghan capital. On 27 April, open fighting started in Kabul between the different groups. Strategic points fell into the hands of different armed groups. The tribal aspect of the conflict started to come to the fore.

34. The President of the transitional Government, Mr. Mojaddidi, entered Kabul on 26 April 1992. He was succeeded by Mr. Rabbani in July 1992. Up to August, the cease-fire between the governmental troops, headed by the Minister for Defence, Mr. Ahmad Shah Massoud, and those headed by Mr. Gulbuddin Hekmatyar was fragile. However, in August 1992, Kabul came under the heaviest rocket attacks during the last 14 years of war. Thousands of rockets fell on Kabul, and more than 1,800 deaths were reported. Thousands of persons have been wounded. More than 100,000 inhabitants of Kabul fled the

city. The Special Rapporteur was informed that it is estimated that, on 10 August 1992 alone, 1,000 to 2,000 rockets fell on Kabul, 600 of them during the first 90 minutes of rocketing. The United Nations evacuated its staff from Kabul. The majority of diplomats posted in the city were also evacuated. Kabul airport was closed.

35. Law and order in Kabul broke down. Newspapers reported that there was a different Government on every street corner, here, Uzbek militia, there, Tajik mujahidin; somewhere else, Shia Muslims or the long-persecuted Hazaras flexed their muscles. The pattern of control changed constantly, turning a simple journey into a frightening gamble. In Le Monde of 13 August 1992 it was written: "Having overthrown the old communist regime, the mujahidin have once again been possessed by the demon of age-old clan battles". A representative of ICRC in Kabul described the situation in the following terms: "This afternoon we had 353 patients in our hospital which has only 300 beds. There are patients in the entrance hall, in the courtyard. Thirty-eight wounded died before they could be treated, 77 were waiting to be operated on, 60 were admitted this afternoon, 91 yesterday and 183 on Saturday". On 14 August 1992, ICRC appealed to everyone involved in the fighting, inter alia, not to target civilians and facilities used only by the civilian population, not to launch indiscriminate attacks, to spare the lives of those who surrender and to treat all captured combatants humanely. On 20 August, Le Monde also quoted the Director of UNOCA: "It's a terrible situation. The Government no longer controls anything; there is no longer law or order. The streets are entirely deserted, except for armed soldiers. Water and electric power have been cut off for nearly a week and my colleagues from WHO are afraid of an outbreak of epidemics". Similar reports reached news agencies every day during the month of August 1992.

36. As early as 21 April 1992, Le Monde, which has followed the events in Afghanistan very closely for years, wrote, "Most of the towns are not under the control of the central Government". This was not only the case during the period under interim President Abdul Rahim Hatif, but it also applies to the new Islamic Government.

37. The demise of the former Afghan Government started in northern Afghanistan when it lost control of Mazar-i-Sharif, Balkh province, on 22 March 1992. In a press communiqué, Mr. Abdul Rashid Dostom, who was subsequently promoted to the rank of General by President Mojaddidi, declared, inter alia: "I inform you that I command more than 5,000 militiamen in the north and in and around Kabul, Logar, Gardez, Paghman and Maidan city. We have made a concrete decision to overthrow the Najib Government ...". Charikar and Herat were the second and third towns where the militia joined forces with the mujahidin. Mehterlam, the capital of Laghman province, was taken by the mujahidin on 25 April, as were other provincial capitals. On 27 April 1992, Jalalabad, the capital of Nangarhar province, was the last city to be taken by the mujahidin.

38. Shuras (councils) composed of members of political parties which signed the Peshawar Accord, members of local councils, and prominent local figures

and commanders took over the administration in most cities. At the time of the Special Rapporteur's visit to the area (September), only Kabul did not have a centralized administration.

39. The takeover in the provinces was accompanied by sporadic killings, plunder, destruction of governmental property, and clashes between rival groups. The March/June 1992 issue of the Monthly Bulletin published by the Afghan Information Centre provides an account of the events which took place during this period.

40. The Special Rapporteur was informed that all prisoners detained by the former Government have been released. The notorious Pol-i-Charkhi prison near Kabul is now empty of prisoners but is said to be inhabited by 250 displaced families which fled the rocketing of Kabul and are now assisted by ICRC.

41. As the Special Rapporteur has already indicated, the new rulers have not resorted to mass executions, as was the case with the Amin regime. Nevertheless, the killing of prominent personalities did occur occasionally. The Minister for State Security, General Ghulam Farooq Yaqubi, is reported to have died under suspicious circumstances (see Kabul Times, 19 April 1992). After he was kidnapped from his house, the body of the former Chief Justice, Mr. Karim Shadan, was found riddled with 2,000 bullets and bearing marks of torture. Other abductions have also been reported. Individual acts of revenge have occurred sporadically.

42. There are numerous towns and villages in Afghanistan which have been completely destroyed. The Special Rapporteur has visited many of them over the years, including during his last visit to the area. No real reconstruction is visible. Reconstruction can only start, however, if two conditions are met. The first is the support of the Afghan people by the international community; President Rabbani has made an appeal to the Secretary-General concerning international assistance and in June 1992 the Secretary-General launched an appeal to the international community for US$ 180 million. Unfortunately, the funds which have been forthcoming have not amounted so far to even half of this sum. The second principal condition is the clearance of mines, which also concerns the right to life. The entire country has been strewn with millions of mines. The efforts required to clear them are tremendous but the means to do so are largely insufficient. De-mining is becoming an ever greater necessity as more refugees return to their homes. The Special Rapporteur was able to visit a mine-clearing site at Sokhroab village near Jalalabad, where teams of the Afghan Technical Consultants Mine Clearance Organization are at work under the command of a former Afghan army officer. He was able to observe hundreds of mines laid in the agricultural lands around a former military stronghold. The available manpower and technical means are insufficient for the task at hand, and the Special Rapporteur observed that the ability of the local communities to reclaim these areas and lands for productive, self-supporting purposes is largely compromised.

43. During his visit to the area, the Special Rapporteur acquainted himself with the work of non-governmental organizations inside Afghanistan. Besides the representatives of UNOCA, he met the representatives of two other coordinating bodies, the Agency Coordinating Body for Afghan Relief (ACBAR), which was created in 1988, and the Afghan National Coordinating Body (ANCB), which coordinates the work of 110 Afghan non-governmental organizations. The representatives of those organizations reported that, apart from Kabul, the projects in the provinces, in particular the rural areas, were going quite well. However, the funds available were described as infinitely small in comparison with the needs. The minefields are the real problem in this situation (see Operation Salam programme, January-June 1992). The progress report of Operation Salam provides a detailed survey of United Nations-sponsored activities in many fields, according to the reconstruction needs of the Afghan population. Reference is made also to the appeal of the Secretary-General for US$ 180 million in additional funds. From 5 June to 31 July 1992, $40 million had been pledged or contributed as a result of that appeal.

44. As has always been his practice during his visits to the region, the Special Rapporteur visited hospitals for the war-wounded. He received information from ICRC concerning the situation of wounded persons in Peshawar, and was able to visit the Kuwaiti Red Crescent Surgical Hospital there. He was informed that 50 to 60 per cent of the patients at the ICRC hospital were suffering from mine injuries, 80 per cent of whom were recent returnees. Owing to the circumstances which prevailed in Kabul in August 1992, ICRC has closed its hospital there and it is currently operated by the Ministry for Health. That hospital was said to be full of wounded persons. As concerns the Kuwaiti Red Crescent Surgical Hospital, the Special Rapporteur was informed that nearly 80 per cent of the patients were suffering from injuries caused by mine blasts. He was also informed that patients whose noses and ears were cut off by armed persons in Kabul have been treated there.

45. As soon as the Special Rapporteur realized the gravity of the human rights situation and in view of the fact that he was unable to travel to the area owing to the circumstances prevailing there, he appealed to the Secretary-General and his Personal Representative to do their utmost to ensure respect for human rights in this situation.

46. On 16 April 1992, the President of the Security Council issued a statement on behalf of the members of the Council in connection with the item entitled "The situation relating to Afghanistan". In his statement, the President appealed for a political solution of the Afghanistan crisis with the objective "of bringing an end to bloodshed and violence, promoting national reconciliation, and safeguarding the unity and territorial integrity of Afghanistan. Failure to do so could only perpetuate the suffering of the Afghan people" (S/23818). No reference to respect for the human rights of all was made in the statement.

47. The Secretary-General has urged the resolution of the Afghan crisis through dialogue. In a press release issued on 24 August 1992 he stated,

inter alia, that the President (i.e., Mr. Rabbani) had assured him that his Government would use all the means at its disposal to ensure the safety and security of all diplomatic missions and the United Nations, as well as their personnel and property, and had expressed the readiness of his Government to facilitate the evacuation of all international personnel from Kabul at their request.

48. On 20 July 1992, ICRC had already urged respect for civilian and medical facilities struggling to cope. It urged those involved, in particular, not to direct any attacks against hospitals, to avoid indiscriminate attacks, especially against civilians and to spare the lives of combatants who surrender.

49. The legal order in Afghanistan has changed dramatically. There is no continuity whatsoever, either in the political sense or with regard to the Constitution or any other law. The decision of the Leadership Council of 13 May 1992 (see para. 29 above) was quite clear in this respect: dissolution of the cabinet of the former regime; abolition of legislation and resolutions which run counter to the Islamic Shariah; dissolution of both houses of the National Assembly; dissolution of the State Security Ministry with all its subordinate structures; and dissolution of the Watan party.

50. Although President Mojaddidi proclaimed a general amnesty, reservations have been made concerning the fate of former President Najibullah, who, according to the information available to the Special Rapporteur, took refuge in the premises of the United Nations in Kabul. A special court has been set up, although President Mojaddidi declared in his statement on the occasion of the establishment of that court (Radio Afghanistan, in Pashto, 1530 GMT, 8 May 1992): "I have to say that this court is not for those people who have worked in previous regimes. It is not for summoning them and prosecuting them, or for them to be questioned or punished". In an interview he gave to The Times on 8 May 1992, Ahmad Shah Massoud, the Minister for Defence, stated, however: "A special court has been set up to bring to justice officials of the former regime", whom he called "traitors and invaders". "Last week, the Council has said that only former President Najibullah, who is hiding, could be prosecuted". No mass killings of members of the former Government, in particular of KHAD (secret police) personnel were reported. Nevertheless, individually motivated acts of revenge resulting in murder or kidnapping are said to have occurred sporadically.

51. The new Islamic State of Afghanistan has banned the sale and consumption of alcohol and has ordered women to wear head scarves (a sight the Special Rapporteur saw only rarely on the streets of Kabul under the former Government and once in Jalalabad in a school where teachers were women).

52. The Leadership Council also decided to remove all anti-religious literature from libraries: "All communist-influenced books and writings shall be confiscated and destroyed". Prayer hours have been reserved for governmental employees.

53. The situation that prevailed in Kabul during the month of August 1992 has given rise to a new exodus of refugees and displaced persons (see para. 69 below). Former senior civil servants and military personnel, professionals, businessmen, students and members of the working class took refuge in Pakistan, where they have been treated humanely and were granted asylum. In addition, numerous former Afghan diplomats, who had not been paid by the Government for months, have also been seeking asylum. However, very few countries are prepared to grant them asylum. The Special Rapporteur's assistance in this regard has been sought on several occasions and he has tried to act positively on humanitarian grounds. In recent weeks, his advice has been sought also by lawyers representing asylum seekers in the United States and several European countries.

B. Relevance of recent political developments for the human rights situation

54. The political events of April and May 1992 have shown, at the governmental level, that the former Government had acted contrary to the Constitution when the President left office and an interim Government, which had not been foreseen by the Constitution, assumed power. The Islamic Government was created on the basis of the Peshawar Accord of April 1992, which may be described as a political decision and a de facto constitution.

55. In view of the present situation in the country, it would be difficult to affirm that Afghanistan currently has an effective Government. It is governed - if the expression still applies - by different groups in Kabul and by numerous shuras (councils) and commanders in the provinces. The ordinances and decisions applied in the provinces are not coordinated in any way with directives of the Government in Kabul. The legal base of authoritative action in the provinces is the Shariah and other sources of law in Islam: the Sunna, the Al-Ijma, i.e., the consensus of opinions of the Ulema (judges and jurisconsults), the Al-Ijtihad or jurisprudence. 1/ All State laws which had been passed by the former Government were abrogated if they were not in conformity with the Shariah (see para. 29 (b) above).

56. The legal personality of Afghanistan, in the sense of public international law, has not been altered by the change of Government. Afghanistan is still a subject of international law and all declarations of the representatives of the Islamic Government in Kabul and United Nations statements concerning Afghanistan advocate the preservation, unity and territorial integrity of the country. However, observers do not exclude the threat of secession of parts of the country because of its tribal structure. Human rights instruments and the instruments of humanitarian law to which Afghanistan has adhered remain binding upon the State of Afghanistan. In addition, the Universal Declaration of Human Rights, which has become a standard of international law, must also be respected. The new Government does not need to make a declaration that it will adhere to these human rights instruments.

57. The new Government of Afghanistan has not made any pronouncement concerning derogation to the provisions of the International Covenant on Civil and Political Rights, within the meaning of article 4 of the Covenant.

58. Afghanistan is also a party to the Geneva Conventions of 12 August 1949.

59. The status of party to these international instruments of human rights and humanitarian law has been described at length by the Special Rapporteur (E/CN.4/1985/21, sect. IV).

60. The mandate entrusted to the Special Rapporteur in different resolutions concerned "the situation of human rights in Afghanistan", regardless of the governmental structure of that country. The relationship of the mandate of the Special Rapporteur to the mandate of the Special Representative of the Secretary-General, pursuant to General Assembly resolutions 35/37, 36/34 and 37/37, was analysed in the Special Rapporteur's first report to the Commission on Human Rights (E/CN.4/1985/21, paras. 21-23).

61. The Special Rapporteur considered the international provisions on human rights binding on Afghanistan in paragraph 143 of his first report (E/CN.4/1985/21). All the observations formulated therein up to paragraph 164 remain valid. The only new element is the fact that the new Government, unlike the former one, does not so far have a written State law. The rules of Islamic law are in force. The relationship of Islamic law with the United Nations human rights instruments is considered in detail in different legal studies which should be consulted with regard to the specific case at hand. This will be done in the Special Rapporteur's report to the Commission on Human Rights at its forthcoming session.

62. In his first report to the Commission on Human Rights (E/CN.4/1985/21), the Special Rapporteur referred to the demographic structure of Afghanistan, which has been altered as a result of the massive movement of the Afghan population as refugees and displaced persons. The distribution of major ethnic groups comprising the population of Afghanistan is the following: Aimak 3.6 per cent, Turkmen 2.9 per cent, Uzbek 9.3 per cent, Tajik 28.5 per cent, Hazara 7.8 per cent, Pashtun 43 per cent of the population. The traditions, combat tactics, manners of waging war, discipline and behaviour towards members of other tribes differ from group to group. A map depicting the major ethnic groups of Afghanistan is reproduced in appendix II to the present report. 2/

63. As the President of Uzbekistan, Mr. Islam Karimov, stated at a press conference in Tashkent, "The peace in the whole region is linked with the situation in Afghanistan". Therefore, the general situation in Afghanistan is of concern from the perspective of international peace and security. The situation of human rights in Afghanistan, which is far from normal, is also of international concern, particularly because Afghanistan is a subject of international law and has acceded to several international human rights instruments, including the Covenants on human rights and the Convention against torture. It is clear that the human rights situation in Afghanistan

is not an internal matter under Article 2, paragraph 7, of the Charter of the United Nations, regardless of the possible interpretations which may be given to this important provision. Moreover, it may be said that the situation of human rights in Afghanistan, which has resulted in massive refugee flows and now shows signs of mounting ethnic violence, is causally linked to issues of peace and security in the region.

64. Despite the change of government in Afghanistan in such a fundamental way as described above, the obligations of Afghanistan under international law, in particular under the international human rights instruments, are still valid. However, sources of Islamic law must also be taken into account. Nevertheless, Afghanistan must respect the relevant international human rights instruments to which it has adhered.

III. SPECIFIC HUMAN RIGHTS PROBLEMS IN AFGHANISTAN

A. The refugee situation

65. The refugee situation concerning Afghanistan is in itself a human rights problem as well as in terms of its consequences. In the conclusions to his report to the Commission on Human Rights after his visit to the region in January 1992, the Special Rapporteur stated that the situation of more than 5 million Afghan refugees had remained unchanged, despite the effort made by the Governments of Pakistan and the Islamic Republic of Iran in cooperation with international organizations aimed at facilitating the return of refugees, and despite the efforts made by the Government of Afghanistan to reintegrate returnees into the society (E/CN.4/1992/33, para. 96). This situation has changed significantly since the fall of the former Government in April/May 1992. In a period of a few months, more than 1 million Afghans have returned at an average rate of 40,000 a week. Most of them have returned to the provinces of Kandahar, Nangarhar, Kunduz and Baghlan and parts of Paktiya province. It has been described as the largest and speediest return movement of refugees ever. The Chief Commissioner for Afghan Refugees of Pakistan and the representatives of the United Nations have stated that the number of Afghan refugees in Pakistan currently stands at slightly over 2 million. Eighty per cent of the returnees went from the North West Frontier Province while 20 per cent came from Baluchistan; 10 to 12 refugee camps have been closed in the North West Frontier Province. A significant movement of refugees from the Islamic Republic of Iran has also been observed. It has been estimated that three repatriation seasons (i.e., until 1994) will be needed for all the refugees to return.

66. As the Special Rapporteur has stated in his earlier reports, the Afghan authorities are not prepared to deal with a massive repatriation. The United Nations and non-governmental organizations are therefore the only ones which can contribute to the resettlement of the refugees returning to Afghanistan.

67. The situation of refugees who have remained abroad has not improved. The number and quantity of staple items they receive has been reduced further.

The international community provides for one quarter of the refugees' needs of wheat, edible oil, sugar, milk and tea while the rest is provided by the Government of Pakistan, although the distribution is said to be irregular. The return of refugees is still taking place under the so-called voluntary repatriation project (see E/CN.4/1992/33, para. 33), which involves the encashment of passbooks at 13 or 14 encashment points.

68. In order to facilitate the repatriation process and in accordance with the provisions of the Geneva Agreement of 1989, efforts are under way to conclude Tripartite Agreements between the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Governments of Afghanistan and Pakistan, and between UNHCR and the Governments of Afghanistan and the Islamic Republic of Iran.

69. Despite the welcome though complicating repatriation of large numbers of Afghan refugees, many thousands of persons have left the capital and have fled to other parts of the country and to Pakistan owing to the fighting in Kabul. Among the refugees who have sought asylum in Pakistan are numerous senior civil servants and military personnel as well as intellectuals and businessmen. The Government of Pakistan has adopted a liberal attitude towards the recent arrivals and they have been treated humanely. Approximately 10,000 refugees arrived in Pakistan after the change of government in Afghanistan, bringing the total number of recent arrivals, together with the persons who fled the rocketing of Kabul in August, to about 59,000. As concerns persons displaced within the country, it is estimated that 600 to 700 families left Kabul for Mazar-i-Sharif, Balkh province. A large number have also gone to Jalalabad, Nangarhar province. The Special Rapporteur was informed that Afghans of Hindu and Sikh origin, despite the fact that they were in possession of valid travel documents, needed visas to enter Pakistan in order to transit to India. It is estimated that more than 100,000 inhabitants of Kabul have fled the city because of the prevailing circumstances: rocketing, shelling, robbery, looting, killings and tortures, including the driving of nails into people's heads and limbs. The Special Rapporteur was able to visit and interview displaced persons in Jalalabad and Mazar-i-Sharif. The provincial authorities are doing their best to supply them with shelter and food and stated that the assistance of United Nations agencies and non-governmental organizations was badly needed. In view of their limited financial resources, food shortages are foreseen for the coming winter. In Nangarhar province, displaced persons have been placed in camps near Jalalabad while schools were evacuated for this purpose in Mazar-i-Sharif. Displaced persons thought the education of their children to be of paramount importance. A woman whom the Special Rapporteur interviewed in Mazar-i-Sharif referred to the dramatic problems resulting from the lack of education for children.

B. The situation of prisoners of war

70. Although the conflict in Afghanistan has changed in nature, the problem of prisoners remains. There is still the problem of former Soviet soldiers held by a number of mujahidin groups who have not yet been released. The

Special Rapporteur was informed that they were not numerous. He has the impression, however, that these former soldiers are being held as hostages in order to reinforce the demands of the various parties concerning the release of Afghan prisoners still said to be detained in the Russian Federation or in the former Soviet republics of Central Asia.

71. The Special Rapporteur was informed that the persons held by the former Afghan Government have all been released. Representatives of the Government of Pakistan stated that numerous Afghan prisoners had been released from Pakistani prisons recently but that 292 remained in detention. All except those who had committed heinous crimes were to be released soon. At the Mazar-i-Sharif airport, the Special Rapporteur met a member of the Afghan air force who had landed on Pakistani soil several years before and was subsequently arrested by the Pakistani authorities. He was released in August of this year, partly due to the intervention of the Special Rapporteur. The Special Rapporteur's assistance has been sought recently with regard to the liberation of a helicopter pilot who had landed in Pakistan in 1989.

72. The Special Rapporteur informed the Commission on Human Rights about his meeting with the prisoners taken during the battle of Khost and their treatment by Commander Haqqani (see E/CN.4/1992/33, paras. 44 and 45). He was informed that all of those prisoners had been released. The Special Rapporteur also quoted in his report a written order issued by Gulbuddin Hekmatyar concerning the treatment of prisoners of war. The Special Rapporteur is of the opinion that this order should remain valid as long as the conflict, which is to be considered as an internal conflict within the meaning of the Geneva Conventions, prevails in certain parts of the country (see E/CN.4/1992/33, para. 51).

C. The situation of political prisoners

73. The Special Rapporteur was informed that after the fall of the former Afghan Government in March/April 1992, there were no more political prisoners in the sense of persons having been convicted by a tribunal of the former Government, and that all had been released.

74. In spite of the proclamation of a general amnesty by the new Government, it appears that there are different practices concerning the arrest and detention of persons who have served the former Government, in particular with regard to personnel of the former secret police (KHAD). When he visited General Dostom's military headquarters, the Special Rapporteur was informed that most of the KHAD personnel had fled, while a limited number had been detained for interrogation. It would appear that they are imprisoned in the former KHAD premises. The Special Rapporteur asked General Dostom about the fate of former General Juma Asak. He was informed that General Asak had resisted arrest in Mazar-i-Sharif and had gone to Kabul where he was arrested and was said to be undergoing interrogation. It was indicated further that during the transitional period approximately 100 prisoners, principally generals and military personnel, had been arrested in Kabul.

75. Neither ICRC nor the Special Rapporteur were able to visit those prisoners who were associated with the former government.

D. Civil and political rights

Right to life

76. The right to life, as proclaimed in article 6 of the International Covenant on Civil and Political Rights, is of paramount importance. The wilful killing and destruction caused by indiscriminate rocket and bomb attacks, particularly in Kabul, are an undeniable fact. Exact figures are not available with regard to the number of lives lost during the past months in Kabul, but it is estimated at more than 1,800.

77. World public opinion has been following with particular interest the application of the death penalty and the executions which have taken place. Death sentences had been pronounced under the former Government. However, in the final days of that Government, a new policy aiming at a reduction of the number of death sentences or their commutation to prison terms was observed. The Special Rapporteur informed the Commission on Human Rights of this trend in his last report (E/CN.4/1992/33, para. 68). In addition to the killings which have occurred during the period of transition, death sentences have been pronounced and carried out under the Shariah. On 7 September 1992, three persons, Mohammed Gul, Sayed Sakander and Mohammad Rafiq, were publicly hanged in Kabul. It has been reported that they belonged to the militia forces of the late Asmat Muslim. Another execution is said to have taken place in Kandahar, also in public. In Jalalabad, Mohamed Qasim was beheaded at the Talashi Chowk on 15 September 1992 after a local Islamic court had publicly imposed a death sentence on him. The Special Rapporteur was able to see the place where the execution was carried out one day after it had taken place. The Deputy Governor of the Nangarhar province informed the Special Rapporteur that the circumstances of the execution were in conformity with the Shariah. However, the Special Rapporteur was unable to meet a competent Islamic judge who would be able to provide him with detailed and accurate information about the implementation of the death sentence.

78. Islamic courts are said to have found the persons mentioned above guilty of robbery, looting, murder, breaking into houses and rape. According to a report by Amnesty International, the Defence Ministry spokesman, Yunus Qununy, declared that their deaths served as an example to others and were necessary to restore law and order in the capital. An analysis from the human rights point of view of the death sentences and their implementation is made in paragraph 97 below.

79. The Special Rapporteur was subsequently informed that an additional public execution had taken place in Kabul. On 30 September 1992, four men from Faryab province were hanged in a public park after they had reportedly been found guilty of killing at least 10 persons, raping 5 women and destroying property. As the ropes on the gallows were said not to have been

knotted properly, three of the men did not die immediately and it was reported that guards had to fire at them in order to accelerate their deaths. This was the second public execution to have taken place in Kabul.

80. On 1 May 1992, The Times published a photograph with the caption: "Summary justice: mujahidin paraded a young teacher through the streets of Kabul yesterday, promising that his hands would be 'surgically removed' as punishment. Javad Asanahi, 36, who teaches mathematics and English, had his hands tied and wore a sign reading 'looter'. He is reported to have stated: 'I did not do anything; they picked me up in my house, please tell my parents ...'."

Personal liberty

81. As far as personal liberty, which is a right enshrined in article 14 of the Covenant, is concerned, numerous unconfirmed reports have been received about wilful deprivation of liberty. On 4 June 1992, the International Herald Tribune reported the following:

> "Kabul (Reuters). Warring Sunni and Shi'ite Muslim guerrilla factions seized hundreds of civilians at gunpoint in the streets of Kabul, with Afghanistan's new coalition government apparently powerless to stop them. Witnesses said Wednesday that the prisoners were separated by ethnic group and taken to makeshift detention centres scattered around the city. Some detainees reportedly were beaten with sticks as they were led away. The abductions began on Tuesday and continued on Wednesday. Fighters of the Islamic Unity of Mujahidin group, which is made up of Sunni Muslims who are mainly ethnic Pashtuns, took away ethnic Hazaras, who are Shi'ite Muslims, while the rival Islamic Coalition Council group seized Pashtuns. The two guerrilla groups fought pitched battles in Kabul's western suburbs on Tuesday, which left several people dead and at least 70 wounded, including many civilians."

Personal security

82. The right to personal security, which is also enshrined in the Covenant, is reported to have been seriously violated. The Special Rapporteur was able to interview two eyewitnesses concerning the practice of cutting off noses and ears (and is in possession of photographs). He was also told about the practice of driving nails into persons' heads which invariably resulted in the death of the victims.

83. The judicial system in Afghanistan has changed completely. There are no remnants of the unified judicial system which had been established by the former government in March 1990. The representatives of the authorities whom the Special Rapporteur was able to meet stated that Islamic courts were functioning in the provinces. In Kabul, the new Government has established a special court. The then President Mojaddidi made the following statement about this court:

"On the establishment of the Special Court, I have to say that this court is not for those people who have worked in previous regimes. It is not for summoning them and prosecuting them, or for them to be questioned or punished. This court, which enjoys full authority, has been formed to improve security in Kabul city. This court has been formed for the prosecution of those people who violate people's homes, honour, children and property and commit crimes. This court will sentence these people in order to prevent such incidents, because, as can be seen, subversive elements in Kabul want to cause anxiety by committing subversive actions. The task of this court is to try these kinds of people."

84. The Special Rapporteur has been unable to get additional information about the composition, procedures and method of work of the Special Court.

85. According to the statement of authorities in the north of Afghanistan, it appears that, in spite of the declaration of amnesty, a number of persons associated with the former government are undergoing interrogation. The premises of the former secret police are reportedly used for this purpose. No information about the circumstances of the interrogations or their legal basis was available to the Special Rapporteur.

86. In this context, the Special Rapporteur would like to quote from his last report to the Commission on Human Rights concerning a declaration made by President Rabbani on the question of clemency in the treatment of prisoners:

"A leader of the opposition who is also an eminent Islamic theologian, Professor Burhanuddin Rabbani, told the Special Rapporteur that a principle of Sharia requires that verse No. 40, i.e. the 'Shura Sura' of the Holy Koran be respected with regard to clemency in the treatment of prisoners. The verse states 'pardon and amnesty is much better than revenge. The pleasure you will derive from pardoning is much greater than for revenge'. In addition, Professor Rabbani indicated that a prisoner would be judged according to the law and that there could be no punishment without trial. There should be due process of law and attenuating circumstances would be taken into account. The sentence could be reduced accordingly. He also informed the Special Rapporteur of two sayings by the Holy Prophet: 'It is preferable to commit an error in the non-application of the sentence than in its application' (which would imply that it should be applied lightly); and 'The smallest evidence which can be used in favour of the criminal should be used so that the sentence is not carried out'. Finally, he stated that in Islam, the life of man is priceless, adding that there is a hadith by the Holy Prophet which says 'When a person is killed, the wrath of God comes out'." (E/CN.4/1992/33, para. 48)

Freedom of opinion

87. Freedom of opinion (article 19 of the Covenant) is virtually non-existent. At the time of the drafting of this report, there were no newspapers in Kabul, nor were the radio and television functioning. On

28 April 1992, it was announced that Radio Kabul had become "Radio Islamic State Afghanistan". It had begun its first broadcasts on 26 April 1992. On 25 May 1992, the following announcement was made:

> "Due to a decision of the Leading Council of the Islamic State of Afghanistan and on the basis of the transformation of the programme of Radio Islamic State Afghanistan with the goal of orientation towards Islamic values, it is not any more acceptable that the Radio Islamic State Afghanistan dispatch music entertainment which up to now comprised 70 per cent of the programme. Besides this, the equipment of Radio Islamic State Afghanistan is, due to a considerable use and overcrowding and the lack of spare parts which would be necessary for an orderly maintenance for keeping of the broadcasting time, in a very bad state. For overcoming the present difficulties and to accede to the allegations about the transmission of too much music, it has been decided that the programme of Radio Islamic State Afghanistan diffuse from 26 May onwards the following: first block from 6 to 9 a.m., second block from noon to 1 p.m., third block from 3 p.m. to 10 p.m". (Translated from German, Monitor Dienst, "Sender der neuen Regierung in Kabul jetzt ohne Musik".)

The Special Rapporteur was informed that local radio and television stations were functioning in Jalalabad and in Mazar-i-Sharif. He was also informed that a committee of ulema (Muslim clergy) was currently deliberating on whether female voices were to be allowed on the radio.

Freedom of association

88. As far as the freedom of association is concerned (article 22 of the Covenant), it has already been indicated that the Watan (Homeland) party has been dissolved (see para. 29 above). The Leadership Council of the Islamic State, under the chairmanship of President Rabbani, decided on 31 May 1992, inter alia: "No party has the right without official agreement of the Leading Council, which would be issued by the Ministry of the Interior, to resume any activity. In the case of non-respect of this rule, a penal prosecution must be envisaged." It is clear that those parties that signed the Peshawar Accord may act with the just mentioned permission. The system of "licensed parties" has been thereby created.

89. It would appear that movements have been established in certain parts of the country which act as a sort of "umbrella" political party, such as the Islamic Movement created in the north of Afghanistan by General Dostom, which exercises a considerable influence over all public affairs.

Right to privacy

90. The right to privacy (article 17 of the Covenant) has not been respected, particularly in Kabul during the period of transition, and offenders have not been prosecuted systematically. The Special Rapporteur has received reliable information that the right to privacy has been widely violated on a regular basis. This concerns in particular homes left without any protection by

persons who have fled Kabul in recent months. Their property is not protected and is in danger of being looted as long as there is no security in the capital.

91. The enjoyment of rights covered by the International Covenant on Economic, Social and Cultural Rights (to which Afghanistan is a party) is not guaranteed at all in Afghanistan. Their enjoyment depends on the particular situation prevailing in a given area and on whether persons have the possibility to work or not. Factories are reportedly working in the northern part of Afghanistan. Civil servants, including diplomats, have not been paid for months. The Afghan currency is still printed in the Russian Federation. In recent months, the value of the Afghan currency against the United States dollar has slightly increased. When crossing the border into Afghanistan at Torkham, the Special Rapporteur could see innumerable packages of afghanis offered for sale. The appeal launched in June by the Secretary-General in support of the Afghan economy is well-founded. The economic infrastructure of the country, including agriculture, housing, roads and even public transportation, has been almost completely destroyed, with the exception of a few cities such as Jalalabad and Mazar-i-Sharif. Most silos are empty. UNOCA and a number of other international organizations, as well as non-governmental organizations, are currently trying to help the population. It is feared that the winter season may create considerable problems concerning the supply of populations with foodstuffs, in both urban and rural areas. This was the opinion of nearly all the persons with whom the Special Rapporteur spoke on the subject.

92. Although belonging to a specific tribe does not appear to be an obstacle for peaceful coexistence in most provinces, the contrary seems to be the case in Kabul. Belonging to a certain tribe or minority appears to be a cause of all sorts of discrimination and harassment. Kabul also appears to be the venue of racial discrimination within the meaning of the International Convention on the Elimination of All Forms of Racial Discrimination. Innumerable examples of such discrimination, in particular in the field of personal liberty and security, are said to have occurred.

E. A legal evaluation of some civil rights

93. In his final report to the Commission on Human Rights, the Special Rapporteur intends to present an analysis of the problems related to penal law which are currently in focus in Afghanistan. 3/

94. Since the question of the death sentence is a problem of the utmost importance in the eyes of a Special Rapporteur who belongs to the European system of law, it would be necessary to consider the following: the death penalty is not excluded by article 6, paragraph 2, of the International Covenant on Civil and Political Rights. In the 200 Hadiths (selected and revised by Abdul Rahim Al-Fahim, 1988, second edition, p. 131) it is stated: "The death penalty is for the benefit of the society. It is the best way to deter crime and, consequently, to allow people to be safe". Therefore, in

spite of the fact that the Special Rapporteur personally is against the death sentence, the death penalty must be recognized as existing in a given society. International law is not ready to interfere in this regard. What must be respected, however, are the conditions under which death sentences may be pronounced. The following conditions are laid down in article 6 of the Covenant:

(a) Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime;

(b) The death sentence can only be carried out pursuant to a final judgement rendered by a competent court;

(c) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases;

(d) Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

95. Even with regard to the implementation of the death sentence, it is stipulated in article 7 of the Covenant that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In the opinion of the Special Rapporteur, these rules must always be applied in the implementation of the death sentence.

96. In its general comment concerning article 6 of the Covenant, the Human Rights Committee stated, inter alia: "The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence". 4/

97. The information available to the Special Rapporteur about the implementation of the death sentence in Kabul on 7 September 1992 (see, in particular, the report of Amnesty International entitled "Afghanistan: reports of torture, ill-treatment and extrajudicial executions of prisoners, late April-early May 1992", page 4, and the information subsequently submitted to the Special Rapporteur by Amnesty International on 14 September and 5 October 1992 concerning the death penalty) raises questions about the competence of the court, the enjoyment of the right tc pardon and appeal. If the hanging in Kabul was carried out by the members of a militia group without a professional hangman, and if it is true that the victims had been hanging for more than 40 minutes before death had occurred, this is also contrary to article 7 of the Covenant because it constitutes cruel, inhuman and degrading treatment or punishment.

98. The Special Rapporteur feels it is necessary to raise these questions although he is unable to answer them without having additional accurate information about the procedures concerning the implementation of the death penalty in Kabul, Kandahar and Jalalabad described in paragraphs 77 and 79 above.

F. Self-determination

99. In its general comment on article 1 of the International Covenant on Civil and Political Rights, on self-determination, the Human Rights Committee stated that self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. With regard to paragraph 1 of article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right. Indirectly, the Committee, in paragraph 3 of its comment on this article, expresses the opinion that election laws are elements of the process of self-determination. 5/

100. As the Special Rapporteur has already stated in his previous reports, the exercise of the right to self-determination differs in accordance with the given situation of a country. For refugees, self-determination primarily means to be free in their determination to return to their homes. This mode of self-determination has started to be fulfilled in Afghanistan since refugees are prepared to return in large numbers. However, the return of all implies that law and order prevail at home and that possibilities exist for reconstruction and in particular for the clearing of mines. These conditions, which have not yet been fulfilled, are not legal but factual ones.

101. Self-determination also means independence from foreign domination. The withdrawal of Soviet troops in 1989 has largely fulfilled this condition. However, foreign interests are still influencing the stability of a country which has so far never been able to exercise the right to self-determination.

102. With the fall of the former government in April/May 1992, and the creation of the Islamic State of Afghanistan by a political decision, an often expressed will of the Afghan people has been complied with. It would appear that the political status of the Afghan people and the political structure of the country would have changed fundamentally had the five-point peace plan of the United Nations been implemented. The circumstances which have led to its breakdown have been partly indicated in this report. The will of the political and military forces comprising the new government appears to guide the country in a different political direction which is not necessarily incompatible with the right to self-determination.

103. A year ago in Peshawar, the so-called Afghan Interim Government and its Election Commission had published an election plan containing 44 articles of the Quanun-e-Taskil-e-Loya Jirga-e-Muntakhab-e-Islam-i-Hal-o-Aqd-e-Afghanistan (Law for the Formation of an Islamic Elective Competent Loya Jirgah of

Afghanistan). Neither the Peshawar Accord of 24 April 1992 nor the decision of the Leadership Council of 14 May 1992 contain any reference to an election as had been foreseen in the five-point peace plan. Nor is there any mention of the creation of a Loya Jirgah or any similar body. On the contrary, it is stated in paragraph 12 of the Peshawar Accord that the transitional Government will be in power for a period of two years. On 28 May 1992, the International Herald Tribune reported that the interim President of Afghanistan had rejected plans for elections within six months. The then President Mojaddidi indicated that elections could be held only when there was stability and people had been disarmed: "Maybe after one year, or one and a half years, or two years, it could be possible". The democratic legitimation of the present Government is therefore postponed and, perhaps quite rightly, linked to a certain degree of reconstruction and the establishment of law and order in the capital and other parts of the country.

104. On 16 September 1992, the Pakistani Frontier Post reported that the Deputy President of Afghanistan, Said Maulvi Mir Hamza, had announced that within six weeks (by the end of October), the nation would hold a Shura-i-hal-o-aaqd (Council for problem-solving and agreement-making). No agreement is reported to have been reached between the commanders and the new Government concerning a Loya Jirgah. The Deputy President made it clear that the Shura-i-hal-o-aaqd would be a broader body than a Loya Jirgah. He stated that this forum followed a 1,400-year-old Islamic practice and was to meet before the expiry of the four-month tenure of President Rabbani. The Deputy President indicated that participants in this special shura would be "suitable representatives of all Afghan people, without discrimination", and that the body would act as a "kind of parliament". He added that after a two-year period of rule there would be national elections on the basis of one person, one vote.

105. Some of the competent interlocutors with whom the Special Rapporteur was able to discuss the question indicated that the aforementioned organ would be composed only of clergymen. The Special Rapporteur was unable to obtain additional information about the so-called Shura-i-hal-o-aaqd.

106. The Special Rapporteur has the impression that a division of Afghanistan along ethnic lines may create a political situation in which a council unable to represent all "minorities" would be considered as a puppet of those who hold the real power in Kabul. Since Kabul has become the symbol of the unity of the country, it is also a symbol of the Afghan nation.

107. The realization of economic self-determination (article 1, para. 3, of the International Covenant on Civil and Political Rights) depends on the factual situation in the country which, at the moment, is disastrous and can be changed only by the effective support of the world community which all international organizations are calling for.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

108. The period of foreign occupation and communist rule in Afghanistan has been over since April/May 1992. However, a situation of conflict is still prevailing in the country which prevents the effective enjoyment of human rights as enshrined in the International Covenants on human rights and the Geneva Conventions to which Afghanistan is a party. The international obligations of Afghanistan with regard to human rights have not changed.

109. The situation in Kabul until September has been disastrous: there has been no food, no water and no electricity. The current situation is compared by some to the events which took place in 1929.

110. The situation of Afghan refugees has changed considerably since the fall of the former Government in the spring of 1992. In a study prepared for UNHCR in September 1992, it is stated:

> "Over 1 million Afghan refugees have repatriated from the Islamic Republic of Iran and Pakistan since April 1992. Despite the recent conflict in Kabul and the approach of winter, a significant return movement continues. It is hoped that conditions in Afghanistan will allow the great majority of those who remain in exile to return home by the end of 1993: peace and security in Afghanistan are prerequisites for their successful repatriation. The reintegration and rehabilitation of the returning refugees is of direct concern to UNHCR. All involved are agreed that assistance must be provided to communities on the basis of needs, with no distinction made between those returning, the internally-displaced and those who remained behind. The pattern of return will, however, have a direct bearing on rehabilitation needs ...".

111. The events in Kabul have resulted in a stream of new refugees and displaced persons. New arrivals from Kabul were being intercepted outside Jalalabad and rerouted to camps for displaced persons. Approximately 2,200 families initially stayed in public parks and gardens and were assisted by the local authorities and non-governmental organizations. They were subsequently transferred to camps for which UNHCR has provided tarpaulins and tents. Displaced persons have reportedly also gone to Sarobi and Laghman. The Special Rapporteur conducted interviews with displaced persons in Jalalabad and Mazar-i-Sharif.

112. With respect to the cause of the recent refugee outflows, among the refugees from Kabul in particular are persons fearing persecution on account of their links with the previous communist government. However, in addition to these persons, the Special Rapporteur is concerned that the prevailing uncertainty in the country over the political and legal order may place members of ethnic and religious minorities at risk of persecution as ethnic and religious tensions rise, especially in the light of the ethnic and sectarian violence which has coloured the fighting in Kabul. In this

connection, the Special Rapporteur hopes that the local administrations having effective control in the country and having committed themselves to following the coalition which is the national Government of Afghanistan will respect the tenets of international human rights law which the Govenment is bound to uphold.

113. The situation of the more than 4 million refugees remains preoccupying owing to a lack of funds and a decrease in international assistance. Only the extraordinary efforts made by neighbouring countries to provide humanitarian assistance, in particular the Governments of the Islamic Republic of Iran and Pakistan, enable the refugees to survive. The hope of being able to return to their homes in the foreseeable future has also changed the general atmosphere in the camps and the attitude of refugees. It has been stated that the return of more than 1 million refugees in the course of only a few months has been the largest and fastest ever UNHCR-assisted repatriation movement of a refugee population. Unless no major negative events occur in the future, there is hope that refugees will return in the course of three repatriation seasons, that is, by the end of 1994.

114. The existence of displaced persons who are not receiving substantial international assistance besides the efforts made by a small number of non-governmental organizations also constitutes a human rights problem. Their living conditions are bad in spite of the efforts made by the provincial and local authorities. They, too, hope to be able to return to their places of origin as the general situation improves. Displaced persons and refugees are apprehensive with regard to the problems of the winter season.

115. The extensive deployment of mines and the lack of funds and of a comprehensive and systematic de-mining process continue to endanger the right to life (article 6 of the International Covenant on Civil and Political Rights) and to security of person and have already affected numerous returnees. Without a concerted effort at the international and national levels aimed at increasing both the manpower and the available funds, the urgently needed acceleration of the de-mining process cannot take place.

116. Since the breakdown of the former government, there has been no effective government in the country as a whole that would be able to guarantee the enjoyment of human rights. Before it collapsed, the former government was in control of Kabul and most of the larger cities. However, since its collapse, the authorities in the different provinces vary in nature and there is no effective central or even local government in Kabul. The Special Rapporteur was informed that every street has its own government in Kabul or that there are at least 16 governments. Nevertheless, Kabul still remains the symbol of the country's unity.

117. After the collapse of the former government, no mass systematic executions were reported. However, individual acts of revenge or racial hatred resulting in loss of life have taken place.

118. During the first transitional period, killing, looting and robbery took place in virtually all parts of the country. Law and order currently prevails to a greater or lesser extent in the provinces, particularly in Nangarhar and in the northern part of Afghanistan. There is still no law and order in Kabul.

119. This situation creates complete uncertainty and insecurity with regard to the enjoyment of human rights enshrined in the international instruments to which Afghanistan is a party.

120. The Shariah is the only source of law. It would appear that Islamic courts are functioning on a provincial and local basis. A special court has been established in Kabul; however, the Special Rapporteur is not acquainted with its functioning and composition.

121. Death sentences have been pronounced and applied in Kabul, Jalalabad and Kandahar during the past months. The relevant procedures and the circumstances of the application of these sentences raise considerable doubts concerning the respect of the conditions stipulated in the International Covenant on Civil and Political Rights (articles 6 and 7) for such cases. The hanging which took place in Kabul on 7 September 1992 seems to raise particular doubts. The Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, Mr. B. W. Ndiaye, in an urgent appeal addressed to the Afghan Minister for Foreign Affairs, referred to the death sentences that were carried out in Kandahar on 7 July 1992 and in Kabul on 7 September 1992. He also referred to Economic and Social Council resolution 1984/50 of 25 May 1984 on safeguards guaranteeing protection of the rights of those facing the death penalty.

122. Amnesty has been proclaimed, but in an ambiguous formulation. A number of persons associated with the former government, including members of the secret police (KHAD), are reportedly detained in interrogation centres to which ICRC and the Special Rapporteur have not had access.

123. Numerous witnesses who have been interviewed by the Special Rapporteur have reported that the right to liberty and security is not guaranteed in Kabul in any way. Other human rights enshrined in the Covenants are not respected either. Some human rights must not be understood exclusively within their meaning in Islamic law but must also be viewed in the light of local and tribal traditions.

124. There is an open armed conflict in Kabul. Similar conflicts are not entirely excluded in the provinces. The conflict in Kabul has resulted in the destruction and looting of innumerable homes. All of the persons with whom the Special Rapporteur spoke about this situation corroborated such reports.

125. The economic and social infrastructure, the basis of welfare for any society, has broken down. The efforts of non-governmental organizations to assist economic, social and cultural recovery are commendable but ultimately too unsystematic to have country-wide positive effects. Many villages are destroyed and no systematic reconstruction is visible. Health services are not functioning.

126. It appears that the United Nations five-point peace plan ultimately failed. The appeals launched by the political organs of the United Nations remain without response. The Government is unable to prepare for elections. It appears that the period of transition during which commanders, shuras and the Peshawar political parties would retain power has been foreseen to last for two years.

127. Ethnic tensions are growing and create the fear that they may produce effects similar to those which have occurred in the former Yugoslavia, in particular with the simultaneous presence in Kabul of militias belonging to different ethnic groups, as it is very difficult to disarm a country which has accumulated a stock of highly sophisticated weapons and where the Kalashnikov has become a symbol of daily life. In Jalalabad and Ghazni, the provincial shuras have reportedly been able to impose a control on the carrying of weapons.

128. The fate of the former President of Afghanistan, Mohammed Najibullah, should be considered from the standpoint of human rights and humanitarian law. As long as the amnesty is applied unconditionally, Mr. Najibullah must also benefit from it. As long as other former high-ranking officials of the former communist government such as Mr. Babrak Karmal, continue to live in complete freedom, Mr. Najibullah should not be discriminated against. However, if the amnesty were not to be unconditional, Mr. Najibullah must at least be treated fairly. The fate of the former Romanian President Ceausescu in 1989 should never be repeated. The premises of the United Nations are reported to have remained untouched so far.

B. Recommendations

129. All prisoners of war still held by the mujahidin should be released unconditionally. This is particularly valid under humanitarian law for ex-Soviet prisoners.

130. In the present stage of the conflict in Afghanistan, humanitarian law must be respected scrupulously: no attacks on populated areas and homes, no attacks on hospitals; the clause of article 147 of the Fourth Geneva Convention urging against "grave breaches" must be respected.

131. Afghanistan should be required to issue a declaration on the basis of article 4 of the International Covenant on Civil and Political Rights (relating to human rights in emergency situations) and the Government should be invited strictly to observe article 4.

132. In applying the Shariah and other Islamic laws, Afghanistan should respect the conditions contained in articles 6 (right to life) and 7 (prevention of torture) of the Covenant. In addition, Afghanistan should comply fully with Economic and Social Council resolution 1984/50, which was endorsed by the General Assembly. The new Government should also be reminded of General Assembly resolution 32/61 of 8 December 1977, in which the Assembly

stated, inter alia, that the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment.

133. The International Committee of the Red Cross should be allowed to visit places of detention organized by combatants or governmental authorities wherever they may be, in the same manner as they were allowed to do so by the former government.

134. The period of detention on remand or preventive detention should not exceed a reasonable length. Persons held in such detention should be set free or undergo a regular trial. Persons in detention should be treated in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

135. Afghanistan should be invited to draft a constitution which contains provisions about human rights, including free elections, in a foreseeable future, after disarmament has been organized and law and order established. Afghanistan should also be invited, when installing nation-wide rulers, to make sure that they represent all sectors of Afghan society and not only specific groups.

136. The proclaimed amnesty should be applied in a strictly non-discriminatory manner. No one may be persecuted on the basis of creed or for belonging to a specific racial or ethnic group or for holding a particular political opinion.

137. The respect of the right to life calls for a speedy de-mining process, which cannot be carried out only by volunteers. In so far as engineering units exist in the army, they should be engaged in mine-clearing; soldiers should be specifically trained in this activity. The international community should provide funds to pay for persons engaged in mine-clearing, and should also provide adequate equipment.

138. The Special Rapporteur was recently informed that mass graves with 2,000 bodies had been discovered on Monday, 21 September 1992, near an army base in the western city of Herat. The report indicated that most of the bodies were found in blood-stained clothes, and it would appear that the previous communist government may have used bulldozers to bury them. This incident should be investigated immediately with the assistance of ICRC. The Special Rapporteur reiterates his recommendation that systematic efforts be made to elucidate the fate of disappeared persons.

139. In case any Afghan children remain in the former Soviet Union, all efforts should be undertaken to send them back to their country.

140. Refugees who have been associated with the former Government and to whom amnesty applies should not be discriminated against in obtaining political asylum until they are satisfied that they would not be persecuted upon return or endangered elsewhere.

141. In respecting the high values of the Islamic religion, the Afghan Government should be invited to accept United Nations monitoring or advisory services in the field of human rights for stabilizing the human rights situation in the country. The protection of minorities should be envisaged, in particular, as part of the fundamental laws of Islam.

142. Operation Salam should receive additional funds that would allow it to monitor the enjoyment of civil and political as well as economic, social and cultural rights in Afghanistan.

143. The situation of human rights in Afghanistan should be studied further and the new Government should be invited to collaborate with the United Nations in this regard.

144. Several organizations and competent individuals have expressed the hope that the Secretary-General will resume his activities as political mediator between the parties in the Afghan conflict, voicing their fear that the situation in Afghanistan could become similar to the one prevailing in Somalia or in Bosnia and Herzegovina. The Special Rapporteur felt obliged to transmit this message to the General Assembly.

Notes

1/ For further reference, see Conferences of Riyadh, Paris, Vatican City, Geneva and Strasbourg on Muslim Doctrine and Human Rights in Islam, Ministry of Justice, Riyadh, 1972.

2/ Published in Nassim Jawad, Afghanistan: A Nation of Minorities (Minority Rights Group International), p. 10.

3/ See Ahmed A. Galwash, The Religion of Islam, vol. II, part three, on penal laws.

4/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

5/ Ibid., Thirty-ninth Session, Supplement No. 40 and corrigendum (A/39/40 and Corr.1), annex VI.

APPENDIX I

Peshawar Accord

In the Name of Allah the Most Beneficent the Most Merciful

22 Shawal A.H. 1412 (24 April 1992)

Salutation and peace be upon the Great Messenger of Allah and his Progeny and Companions. And after that:

The structure and process for the provisional period of the Islamic State of Afghanistan, was formed as under:

1. It was decided that a 51 person body, headed by Hazrat Sahib Sibghatullah Mojaddedi, would go inside Afghanistan so that they could take over power from the present rulers of Kabul, completely and without any terms and conditions during the two months' period. The head of this body will also represent the Presidentship of the State during these two months. After this period, this body will remain as an Interim Islamic Council, along with the Transitional State and its Chairmanship will be held by Hazrat Sahib. The period of this Council will also be for four (4) months.

2. It was decided that Professor Rabbani will remain as the President of the Transitional Islamic State of Afghanistan and the head of the Leadership Council for four (4) months. He will commence his work officially at the time when the two months of the transfer of power will be elapsed.

3. The above-mentioned period will not be extended even by a day.

4. The Prime Minister and other members of the Cabinet will be appointed from the second grade members of the Tanzeemat, on the discretion of the heads of the Tanzeemat.

5. The Prime Ministership was assigned to the Hizb-e-Islami, Afghanistan.

6. The Deputy Prime Ministership and the Ministry of Interior, to Ittehad-e-Islami, Afghanistan.

7. The Deputy Prime Ministership and the Ministry of Education, to Hizb-e-Islami of Maulvi Khalis.

8. The Prime Ministership and Ministry of Foreign Affairs, were assigned to the National Islamic Front.

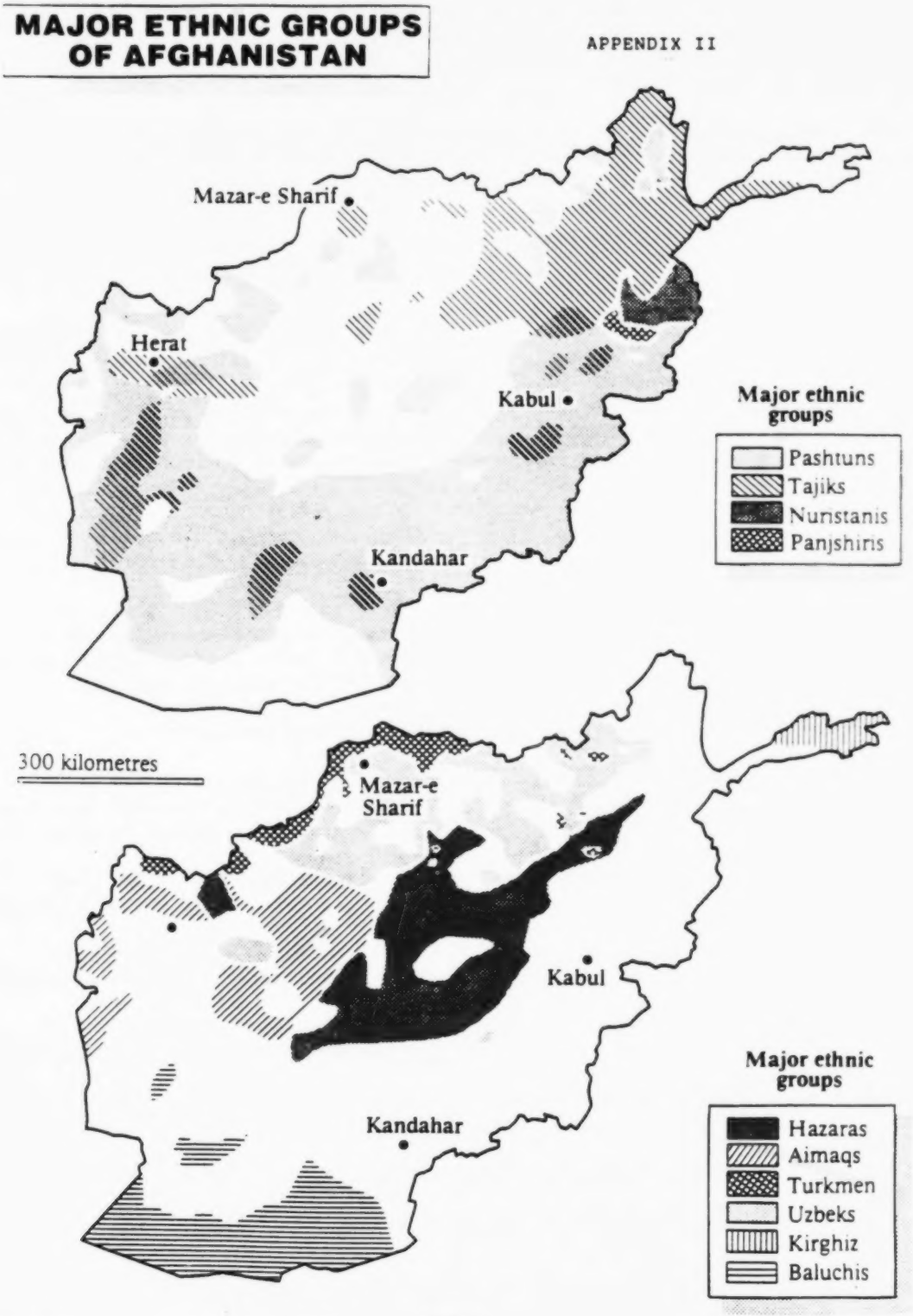
9. The Ministry of Defence to Jamiat-e-Islami, Afghanistan.

10. The Supreme Court to Harkat-e-Inqilab-e-Islami Organization.

11. It was also decided that the Leadership Council, in addition to making the division of appointments in the Ministries, will also determine Ministries for Hizb-e-Wahdat, Shura-e-Etelaf (Council of Coalition) Maulvi Mansoor and the other brothers.

12. The total period of this process will be six months. As regards to Transitional Government, the Islamic Council will make a unanimous decision. The period of this Transitional Government will be two (2) years.

APPENDIX II



Adapted from Norwegian Refugee Council

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ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

Letter dated 10 November 1992 from the Permanent Representative of El Salvador to the United Nations addressed to the Secretary-General

I have the honour to inform you that the Government of El Salvador has decided to grant formal recognition to the new States which attained their independence as a result of the disintegration of the Union of Soviet Socialist Republics and the Socialist Federal Republic of Yugoslavia, and which currently form part of the international community and have become full Members of the United Nations.

In that connection, I annex hereto the statement issued by the Government of El Salvador in granting full recognition to the new States, and should like to request you to have this letter and its annex distributed to the Member States as an official document of the General Assembly under agenda item 19.

(Signed) Ricardo G. CASTANEDA
Ambassador
Permanent Representative

ANNEX

Statement issued by the Government of El Salvador
on 29 October 1992 in San Salvador

The Government of El Salvador, in the light of the profound changes that have taken place in the international sphere, particularly in Eastern Europe, which have resulted in the birth of sovereign and independent States that previously formed part of the Union of Soviet Socialist Republics and the Socialist Federal Republic of Yugoslavia;

Being aware that the new States constitute a political reality on the present international scene, their having been admitted to full membership in the United Nations and its specialized agencies;

Taking into account that the new States have formally declared that they will exercise the rights and comply with the obligations of any State member of the international community in accordance with the provisions of the Charter of the United Nations and the principles of international law;

Being convinced of the constructive role which those new States can play in the efforts being undertaken for the maintenance of peace and international security, the strengthening of democratic systems and the full respect for human rights and fundamental freedoms, and for the promotion of cooperation and economic development among nations;

Therefore, the Government of El Salvador decides to grant full recognition to the new States of Estonia, Latvia, Lithuania, Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Slovenia, Croatia and Bosnia and Herzegovina.